

United States  
Court of Appeals  
for the Ninth Circuit

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

EDWARD D. SULTAN, Respondent.

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

OLGA L. SULTAN, Respondent.

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Transcript of Record

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Petitions to Review Decisions of The Tax Court  
of the United States

FILED

JUL 23 1953

PAUL F. O'BRIEN

CLERK



No. 13804

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Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## APPEARANCES:

For Petitioner:

MILTON CADES, Esq.,  
URBAN E. WILD, Esq.,  
J. RUSSELL CADES, Esq.,  
EDWARD J. GREANEY, C.P.A.

For Respondent:

ROBERT G. HARLESS, Esq.

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Docket No. 24513

EDWARD D. SULTAN,                      Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DOCKET ENTRIES

1949

- Aug. 12—Petition received and filed, Taxpayer notified. Fee paid.
- Aug. 17—Copy of petition served on General Counsel.
- Aug. 12—Notice of appearance of Urban E. Wild, Milton Cades and J. Russell Cades as counsel filed.
- Aug. 12—Notice of appearance of Edward J. Greaney as counsel filed.
- Aug. 12—Request for Circuit hearing in Honolulu, Territory of Hawaii, filed by taxpayer. 8/31/49 Granted.

1949

Sep. 27—Answer filed by General Counsel.

Oct. 3—Copy of answer served on taxpayer, Honolulu, Territory of Hawaii.

1951

Mar. 12—Hearing set June 13, 1951, Honolulu.

May 22—Hearing changed to June 15, 1951, Honolulu.

June 19/20—Hearing had before Judge Arundell, on merits. Proceedings consolidated for hearing. Respondent's oral motion for leave to file amended answer, granted. Amended answer filed. Copies served. Stipulation of facts with exhibits 1 through 39 filed. Petitioner's brief due August 23/51. Respondent's brief due October 8/51. Petitioner's reply brief due November 23/51.

July 18—Transcript of hearing 6/19/51 filed.

Aug. 22—Brief filed by taxpayer. 8/23/51 Copy served.

Oct. 2—Motion for extension to November 7, 1951, to file brief filed by General Counsel. 10/2/51 Granted.

Oct. 22—Motion for extension to January 22, 1952, to file reply brief filed by taxpayer. 10/23/51 Granted.

Nov. 7—Reply brief filed by General Counsel.

1952

Jan. 23—Reply brief filed by taxpayer. Copy served.

1952

- July 3—Findings of fact and opinion rendered, Arundell, Judge. Decision will be entered under rule 50. Copy served.
- Oct. 9—Respondent's computation for entry of decision filed.
- Oct. 13—Hearing set November 19, 1952, at Washington, D. C., on respondent's computation.
- Oct. 30—Consent to settlement filed by taxpayer.
- Oct. 31—Decision entered, Judge, Arundell, Div. 7.

1953

- Jan. 19—Petition for review by U. S. Court of Appeals, Ninth Circuit, filed by General Counsel.
- Feb. 6—Proof of service of petition for review on counsel filed.
- Feb. 6—Affidavit of service of filing petition for review filed.
- Feb. 12—Motion for extension of time to 4/17/53 to transmit record filed by General Counsel.
- Feb. 13—Order extending time to 4/17/53 to prepare, transmit and deliver the record, entered.
- Apr. 2—Statement of points filed by General Counsel, with statement of service by mail thereon.
- Apr. 2—Statement re diminution of record filed by General Counsel, with statement of service by mail thereon.



Docket No. 24514

OLGA L. SULTAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

[Printer's Note: Appearances and Docket Entries of No. 24514 are duplicates of Docket No. 24513.]

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The Tax Court of the United States

Docket No. 24513

EDWARD D. SULTAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

## PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:FC:LMJ-150D) dated April 26, 1949, and, as a basis of his proceeding, alleges as follows:

## I.

The petitioner is an individual whose mailing address is 1025 Alakea Street, Honolulu, T. H. The returns here involved were filed with the Collector for the Honolulu Division.



## II.

The notice of deficiency (a copy of which is attached and marked "Exhibit A") was mailed to petitioner on April 26, 1949.

## III.

The taxes in controversy are income taxes for the years and in the amounts shown below. The deficiency asserted is \$389,618.34 for the years and in the amounts shown below:

Year	Deficiency	Taxes in Controversy
1944	\$145,292.17	\$145,292.17
1945	183,632.00	183,632.00
1946	60,694.17	57,926.43
	<hr/>	<hr/>
	\$389,618.34	\$386,850.60

## IV.

The determination of tax set forth in said notice of deficiency is based on the following error:

1. The Commissioner of Internal Revenue has erred in holding that Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, hereinafter referred to as the "Edward D. Sultan Trust", was not, during the period February 1, 1943, to January 31, 1946, inclusive, a bona fide special partner for income tax purposes of Edward D. Sultan Co., a special partnership organized and doing business under the laws of the Territory of Hawaii;

2. The Commissioner of Internal Revenue has

erred in holding that all of the income of said Edward D. Sultan Trust during the calendar years 1944 to 1946, inclusive, is the income of petitioner for income tax purposes, subject, however, to an adjustment under the Hawaiian Community Property Law commencing as of June 1, 1945;

3. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, by adding to the income reported by petitioner for said year from said Edward D. Sultan Co., the sum of \$158,396.05, being the income received by Edward D. Sultan Trust from its interest in said partnership for said partnership's fiscal year ended January 31, 1944;

4. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, by adding to the income reported by petitioner for said year the sum of \$2,171.26 received by Edward D. Sultan Trust as income from dividends during the calendar year 1944;

5. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1944, by adding to the net gain reported by petitioner for said year the sum of \$2,344.98, being the net long-term capital gain of Edward D. Sultan Trust, which was reported as income of said trust for the calendar year 1944;

6. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$145,292.17, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1944;

7. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1945, by adding to the income reported by petitioner for said year from said Edward D. Sultan Co. the sum of \$203,722.46;

8. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$183,632.00, or of any part thereof, in the petitioner's income tax for the taxable year ended December 31, 1945;

9. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the income reported by petitioner for said year from said Edward D. Sultan Co., the sum of \$73,781.83, being the income reported (less an adjustment in the amount of \$29,455.74, being the amount allocable to Olga L. Sultan, wife of petitioner, based on the Hawaiian Community Property Law in effect as of June 1, 1945) by Edward D. Sultan Trust from its interest in said partnership for said partnership's fiscal year ended December 31, 1946;

10. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of

\$60,694.17, or of any part thereof, in petitioner's income tax for the taxable year ended December 31, 1946.

### V.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

1. The petitioner, on August 28, 1941, settled the Edward D. Sultan Trust by a transfer to Ernest Walter Sultan and Bishop Trust Company, Limited, as Trustee, of the sum of \$42,000.00 under the hereinafter mentioned terms of said Trust Agreement;

2. Under the provisions of the Deed of Trust, all income of the Edward D. Sultan Trust was to be accumulated until the beneficiary, a son of petitioner, the Settlor, reached the age of twenty-one (21) years, with discretion given to the Trustees to pay out of the net income such amounts as might be necessary for the maintenance, support and education of the beneficiary, but not in excess of Three Hundred Dollars (\$300.00) per month. Under the provisions of the Deed of Trust, regular payments of income were to be made to the beneficiary from the time he reached the age of twenty-one (21) years until he attains the age of thirty (30) years, at which time the trust will terminate and all the property in the trust will be turned over to the beneficiary in cash and annuities. Provisions are made for the gift over to other persons in the event of the death of the beneficiary, with the added provision that under no circumstances is any part of the income or property of the trust to go to the

Settlor. The trust is, by its terms, irrevocable, and the Settlor has no power to retake any part of the income or property of the trust, having completely parted with all incidents of ownership in the income and property of the trust;

3. By the terms of said Trust Agreement, said sum of \$42,000.00 was to be invested in the purchase of a forty-two per cent (42%) interest in a special partnership to be organized under the name of "Edward D. Sultan Co.";

4. Upon application duly made in the Circuit Court of the Territory of Hawaii for approval of the said investment, after a hearing thereon an order was entered in said court under which the Trustees were instructed, authorized and directed to become a special partner in the partnership of Edward D. Sultan Co., upon compliance with the provisions of the statutes of the Territory, to make and execute a partnership agreement in the form submitted to the court, and to invest and continue to invest in the said partnership the sum of \$42,000.00 as of or on August 30, 1941;

5. Petitioner filed a gift tax return for the calendar year 1941, and paid the tax computed thereon. Thereafter, upon examination of petitioner's gift tax return, the Commissioner of Internal Revenue made a determination that, by reason of the fact that the value of the 42% interest in the partnership was greater than \$42,000.00, the amount paid therefor to petitioner, petitioner was liable for ad-



ditional gift tax, which deficiency was thereupon paid by petitioner;

6. A special partnership was formed as of August 30, 1941, in the form approved by the court, between Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen, and Gabriel Lewis Sultan, general partners, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, special partner, in accordance with the special partnership law of the Territory;

7. Under the terms of the special partnership agreement, all general partners actively engaged in the business of the partnership were to receive compensation for services rendered to the partnership, which compensation was chargeable, for the purpose of computing net profits under the partnership agreement, as an expense of the business. All the remaining net profits were to be divided among all the partners in proportion to the capital investment of each of the partners. The partnership agreement contained the statutory limitations on the powers of the special partner to the effect that only the general partners had the authority to transact the business of the partnership or incur obligations or liabilities on its behalf. The special partner, at all times, could investigate the partnership affairs and advise and consult with the general partners as to its management;

8. The partnership was duly registered in the office of the Treasurer of the Territory of Hawaii, and all amendments and changes, and the final ter-

mination were so registered. As required by law, the partnership gave legal notice by publication in newspapers of general circulation of its formation, changes made therein, and, finally, of its dissolution;

9. The Trustees kept themselves fully informed of the affairs of the partnership, advised with the general partners as to the conduct of the business, received periodical statements of income, and kept a close watch on the affairs of the partnership;

10. From the time of its formation until termination of the partnership, all profits were paid out proportionately to the partners, including the special partner, and upon termination of the said partnership the trust received the full amount of its capital contribution, plus its share of all profits of the partnership to said date, in accordance with the provisions of the partnership agreement;

11. All of the property of the Edward D. Sultan Trust, under agreement between the Trustees, was held in the custody of Bishop Trust Company, Limited, one of the Trustees, which is a Hawaiian corporation duly authorized, among other things, to carry on a trust and fiduciary business, and is subject to examination by banking examiners of the office of the Treasurer of the Territory of Hawaii;

12. The Trustees have invested and reinvested the funds coming into their hands, taking title to all investments and trust property in the name of the Trustees;

13. The Trustees at no time before the beneficiary reached the age of twenty-one (21) years paid out anything for his support, maintenance or education,

and, from and after the time he reached the age of 21 years, the Trustees have paid to the beneficiary the amounts of income provided for in said Deed of Trust;

14. The gross income of said Edward D. Sultan Trust, for the taxable year 1944, included income from the partnership of Edward D. Sultan Co. in the amount of \$158,396.05, which income was reported by said trust for the year 1944, the income tax was computed thereon, and said tax was properly paid by the said trust;

15. The gross income of said Edward D. Sultan Trust, for the taxable year 1944, included income from dividends in the amount of \$2,171.26, which income was reported by said trust for the year 1944, the net income for income tax purposes was computed thereon by the said trust, and said tax was properly paid by the said trust;

16. The gross income of said Edward D. Sultan Trust, for the taxable year 1944, included net long-term capital gains in the amount of \$2,344.98, which income was reported by said trust for the year 1944, the net income for income tax purposes was computed thereon by said trust, and said tax was properly paid by the said trust;

17. The gross income of said Edward D. Sultan Trust, for the taxable year 1945, included income from said partnership, Edward D. Sultan Co., in the amount of \$203,722.46, which income was reported by said trust for the year 1945, the income tax of said trust was computed thereon, and said tax was properly paid by said trust;



18. The gross income of said Edward D. Sultan Trust, for the taxable year 1946, included income from said partnership, Edward D. Sultan Co., in the amount of \$103,237.57, which income was reported by said trust for the year 1946, the income tax of said trust was computed thereon, and said tax was properly paid by said trust;

19. The Edward D. Sultan Co., a special partnership organized and doing business under the laws of the Territory of Hawaii, composed of Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen, and Gabriel Lewis Sultan, general partners, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, special partner, elected to file its tax returns on an accrual and fiscal year basis ending on the 31st day of January, and filed its first return for the fiscal year ending January 31, 1942.

Wherefore Petitioner Prays that this Court may hear the proceeding and determine that there is no deficiency due from the petitioner for the years 1944, 1945 and 1946.

/s/ EDWARD D. SULTAN,

Petitioner

MILTON CADES,

URBAN E. WILD,

J. RUSSELL CADES,

EDWARD J. GREANEY, C.P.A.,

Counsel for Petitioner

Of Counsel:

SMITH, WILD, BEEBE & CADES

Territory of Hawaii,  
City and County of Honolulu—ss.

Edward D. Sultan, being duly sworn, says that he is the petitioner above named; that he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein; that the statements contained therein are true, except those stated to be upon information and belief, and that those he believes to be true.

/s/ EDWARD D. SULTAN

Subscribed and sworn to before me this 5th day of August, 1949.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of Hawaii. My commission expires 6-30-53.

EXHIBIT "A"

Form 1230

SN-IT-1

IT:FC:LMJ-150D

April 26, 1949

Mr. Edward D. Sultan,  
1025 Alakea Street, Honolulu, T. H.

Sir:

You are advised that the determination of your income tax liability for the taxable years ended December 31, 1944, December 31, 1945, and December 31, 1946, discloses a deficiency of \$389,618.34 as shown in the statement attached.

In accordance with the provisions of existing in-

ternal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 150th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States at its principal address, Washington 25, D. C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P. O. Box 421, Honolulu 9, T. H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner

/s/ By H. A. PETERSON,

Internal Revenue Agent in Charge

Enclosures: Statement, Form 1276, Form of Waiver

## STATEMENT

Year	Deficiency
1944 .....	\$145,292.17
1945 .....	183,632.00
1946 .....	60,694.17
	<hr/>
Total.....	\$389,618.34

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 4, 1947, to your protest dated June 26, 1948, and to statements made at a conference held on April 12, 1949.

A copy of this letter and statement has been mailed to your representative, Mr. Milton Cades of Smith, Wild, Beebe & Cades, P. O. Box 224, Honolulu 10, T. H., in accordance with the authority contained in the power of attorney executed by you.

## Taxable Year Ended December 31, 1944

## Adjustments to Net Income

Net income as disclosed by return.....	\$186,226.77	
Unallowable deductions and additional income:		
(a) Partnership income ...	\$158,396.05	
(b) Trust income—dividends	2,171.26	
(c) Trust income—net long- term capital gains....	2,344.98	162,912.29
	<hr/>	<hr/>
Total.....	\$349,139.06	

Nontaxable income and additional  
deductions:

(d) Contributions .....	\$1,033.20	
(e) Taxes .....	3,809.58	
(f) Other deductions .....	1,751.28	6,594.06
	<hr/>	<hr/>
Net income adjusted .....		\$342,545.00

### Explanation of Adjustments

(a) Represents income of the partnership, Edward D. Sultan Company, reported on fiduciary return filed for the Edward D. Sultan Trust, which is held to be taxable to you.

(b) Represents dividend income of the Edward D. Sultan Trust, reported on a fiduciary return, which is held to be taxable to you.

(c) Represents net long-term capital gains of the Edward D. Sultan Trust, reported on a fiduciary return, which are held to be taxable to you.

(d) Represents contributions made by the Edward D. Sultan Company, a partnership, which were deducted on a fiduciary return filed for the Edward D. Sultan Trust. Since the income of the trust is held to be taxable to you, the contributions are deductible on your return.

(e) Represents taxes paid by the Edward D. Sultan Trust and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, the taxes are deductible on your return.

(f) Represents other deductions, mainly trustee expense, paid by the Edward D. Sultan Trust and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, the other deductions are deductible on your return.

Computation of Alternative Tax

Net income adjusted .....	\$342,545.00
Less: Net long-term capital gains .....	4,088.53
	<hr/>
Ordinary net income .....	\$338,456.47
Less: Surtax exemptions .....	1,000.00
	<hr/>
Balance (surtax net income) .....	\$337,456.47
	<hr/>
Surtax on \$337,456.47 .....	\$281,905.39
Ordinary net income .....	\$338,456.47
Less, Normal tax exemption .....	500.00
	<hr/>
Balance subject to normal tax .....	\$337,956.47
Normal tax at 3%	
on \$337,956.47 .....	10,138.69
Partial tax .....	\$292,044.08
Plus: 50% of net long-term capital gains	
of \$4,088.53 .....	2,044.27
Alternative tax .....	\$294,088.35

Computation of Tax

Net income adjusted .....	\$342,545.00
Less: Surtax exemptions ..	1,000.00
	<hr/>
Surtax net income .....	\$341,545.00



Surtax on \$341,545.00 .....	\$285,625.95
Net income adjusted .....	\$342,545.00
Less: Normal tax exemption	500.00
Bal. subject to normal tax..	342,045.00
Normal tax at 3% on \$342,045.00 .....	10,261.35
	<hr/>
Total income tax .....	\$295,887.30
	<hr/>
Correct income tax liability .....	\$294,088.35
Income tax liability disclosed by return,	
Account No. 300726 .....	148,796.18
	<hr/>
Deficiency in income tax .....	\$145,292.17
	<hr/>

Taxable Year Ended December 31, 1945

Adjustments to Net Income

Net income as disclosed by amended return .....	\$238,829.02
Unallowable deductions and additional income:	
(a) Partnership income .....	203,722.46
	<hr/>
Total .....	\$442,551.48
Nontaxable income and additional deductions:	
(b) Contributions .....	\$3,693.06
(c) Taxes .....	2,525.92
(d) Trustee's commission ...	2,150.29
	<hr/>
Net income adjusted .....	\$434,182.21

Explanation of Adjustments

(a) Represents income of the partnership, Ed-

ward D. Sultan Company, reported on fiduciary return filed for the Edward D. Sultan Trust, which is held to be taxable to you. This amount consists of income transferred from the partnership return of \$207,922.46, less \$4,200.00 accrued salaries of the partnership, shown under "other deductions" on the fiduciary return.

(b) Represents contributions made by the Edward D. Sultan Company, a partnership, which were deducted on a fiduciary return filed for the Edward D. Sultan Trust. Since the income of the trust is held to be taxable to you, the contributions are deductible on your return.

(c) Represents taxes paid by the Edward D. Sultan Trust and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, the taxes are deductible on your return.

(d) Represents trustee's commissions paid by the Edward D. Sultan Trust and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, the trustee's commissions are deductible on your return.

#### Computation of Alternative Tax

Net income adjusted .....	\$434,182.21
Less: Net long-term capital gains .....	1,036.20
	<hr/>
Ordinary net income .....	\$433,146.01
Less: Surtax exemptions .....	1,000.00
	<hr/>
Balance (surtax net income) .....	\$432,146.01



Surtax on \$432,146.01 . . . . .	\$368,072.87
Ordinary net income . . . . .	\$433,146.01
Less: Normal tax exemption . . . . .	500.00
	<hr/>
Balance subject to normal tax . . . . .	\$432,646.01
Normal tax at 3%	<hr/>
on \$432,646.01 . . . . .	12,979.38
	<hr/>
Partial tax . . . . .	\$381,052.25
Plus: 50% of net long-term capital gains of \$1,036.20 . . . . .	518.10
	<hr/>
Alternative tax . . . . .	\$381,570.35

#### Computation of Tax

Net income adjusted . . . . .	\$434,182.21
Less: Surtax exemptions . . . . .	1,000.00
	<hr/>
Surtax net income . . . . .	\$433,182.21
Surtax on \$433,182.21 . . . . .	\$369,015.81
Net income adjusted . . . . .	\$434,182.21
Less: Normal-tax exemption . . . . .	500.00
	<hr/>
Balance subject to normal tax . . . . .	\$433,682.21
Normal tax at 3% on \$433,682.21 . . . . .	13,010.47
	<hr/>
Total income tax . . . . .	\$382,026.28
Correct income tax liability . . . . .	\$381,570.35
Income tax liability disclosed by amended return, Account No. 300591 . . . . .	197,938.35
	<hr/>
Deficiency in income tax . . . . .	\$183,632.00

## Taxable Year Ended December 31, 1946

## Adjustments to Net Income

Net income as disclosed by return . . . . .	\$102,004.60	
Unallowable deductions and additional income:		
(a) Partnership income . . . . .	\$73,781.83	
(b) Tidal wave loss . . . . .	3,273.50	77,055.33
	<hr/>	<hr/>
Total . . . . .		\$179,059.93
Nontaxable income and additional deductions:		
(c) Contribution . . . . .	\$ 2,172.88	
(d) Taxes . . . . .	2,571.64	
(e) Other deductions . . . . .	779.08	5,523.60
	<hr/>	<hr/>
Net income adjusted . . . . .		\$173,536.33

## Explanation of Adjustments

(a) Represents income of the partnership, Edward D. Sultan Company, reported on fiduciary return filed for the Edward D. Sultan Trust, which is held to be taxable to you. Of the total income of \$103,237.57 reported by the trust, one-half of \$58,911.49 earned after June 1, 1945, or \$29,455.74 is allocated to Mrs. Olga L. Sultan under the Hawaii Community Property Law. The partnership reported on a fiscal year basis ending January 31, 1946.

(b) Represents one-half of the tidal wave loss on Kewalo Bay property. Since this property is considered to be the separate property of Mrs. Olga

L. Sultan, the full loss of \$6,547.00 is allowable to Mrs. Sultan, and the loss deduction of \$3,273.50 claimed by you is accordingly transferred to Mrs. Sultan's return.

(c) Represents contributions made by the Edward D. Sultan Company, a partnership, which were deducted on a fiduciary return filed for the Edward D. Sultan Trust. Since the income of the trust is held to be taxable to you, the contributions are deductible on your return. Of the total contribution deductions of \$3,539.34 reported by the trust, one-half of \$2,732.93 paid after June 1, 1945, or \$1,366.56 is allocated to Mrs. Olga L. Sultan under the Hawaii Community Property Law.

(d) Represents taxes paid by the Edward D. Sultan Trust before June 1, 1945 and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, the taxes are deductible on your return.

(e) Represents other deductions, mainly trustee's commissions, paid by the Edward D. Sultan Trust, and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to you, these deductions are deductible on your return. Of the total amount of \$1,108.62 deduced by the trust, one-half of \$659.09 paid after June 1, 1945, or \$329.54, is allocated to Mrs. Olga L. Sultan under the Hawaii Community Property Law.

#### Computation of Tax

Net income adjusted .....	\$173,536.33
Less: Exemptions .....	1,000.00
	<hr/>

Balance subject to tax .....	\$172,536.33
<hr/>	
Combined tentative normal tax and sur- tax on \$172,536.33 .....	\$132,102.70
Less: 5% of \$132,102.70 .....	6,605.14
<hr/>	
Correct income tax liability .....	\$125,497.56
Income tax liability disclosed by return, Account No. 912801 .....	64,803.39
<hr/>	
Deficiency in income tax .....	\$ 60,694.17

[Endorsed]: T.C.U.S. Filed Aug. 12, 1949.

[Title of Tax Court and Cause No. 24513.]

### ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

I, II and III. Admits the allegations contained in paragraphs I, II and III of the petition.

IV-1 to 10, inclusive. Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph IV of the petition and subparagraphs 1 to 10, inclusive, thereunder.

V-1. Admits the allegations contained in subparagraph 1 of paragraph V of the petition.

2 and 3. Denies the allegations contained in subparagraphs 2 and 3 of paragraph V of the petition.

4 and 5. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs 4 and 5 of paragraph V of the petition.

V-6 to 19, inclusive. Denies the allegations contained in subparagraphs 6 to 19, inclusive, of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
T. M. MATHER,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 27, 1949.

The Tax Court of the United States

Docket No. 24514.

OLGA L. SULTAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

## PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Bureau symbols IT:FC:LMJ - 150D) dated April 26, 1949, and as a basis of her proceeding, alleges as follows:

## I.

The petitioner is an individual whose mailing address is 1025 Alakea Street, Honolulu, T.H. The return here involved was filed with the Collector for the Honolulu Division.

## II.

The notice of deficiency (a copy of which is attached and marked "Exhibit A" was mailed to petitioner on April 26, 1949.

## III.

The taxes in controversy are income taxes for the year 1946 in the amount of \$17,091.57. The deficiency asserted is \$17,091.57, the entire amount of which is in controversy.



## IV.

The determination of tax set forth in said notice of deficiency is based on the following errors:

1. The Commissioner of Internal Revenue has erred in holding that Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, hereinafter referred to as the "Edward D. Sultan Trust", was not, during the period February 1, 1945 to January 31, 1946, inclusive a bona fide special partner for income tax purposes of Edward D. Sultan Co., a special partnership organized and doing business under the laws of the Territory of Hawaii;

2. The Commissioner of Internal Revenue has erred in holding that all the income of said Edward D. Sultan Trust, during the calendar year 1946, is the income of Edward D. Sultan, husband of petitioner, for income tax purposes, and, from and after June 1, 1945, by virtue of the Hawaiian Community Property Law, one-half thereof is taxable to petitioner;

3. The Commissioner of Internal Revenue has erred in the determination of petitioner's income tax net income for the taxable year ended December 31, 1946, by adding to the income reported by petitioner for said year from said Edward D. Sultan Co., the sum of \$29,455.74 received by Edward D. Sultan trust as income from its interest in said partnership for said partnership's fiscal year ended January 31, 1946, and allocable to petitioner based

on the Hawaiian Community Property Law in effect as of June 1, 1945;

4. The Commissioner of Internal Revenue has erred in determining that there is a deficiency of \$17,091.57, or of any part thereof, in petitioner's income tax for the taxable year ended December 31, 1946.

The facts upon which petitioner relies as a basis for this proceeding are as follows:

1. Edward D. Sultan, husband of petitioner, on August 28, 1941, settled the Edward D. Sultan Trust by a transfer to Ernest Walter Sultan and Bishop Trust Company, Limited, as Trustees, of a sum of \$42,000.00 under the hereinafter mentioned terms of said Trust Agreement;

2. Under the provisions of the Deed of Trust, all income of the Edward D. Sultan Trust was to be accumulated until the beneficiary, a son of the Settlor, reached the age of twenty-one (21) years, with discretion given to the Trustees to pay out of the net income such amounts as might be necessary for the maintenance, support and education of the beneficiary, but not in excess of Three Hundred Dollars (\$300.00) per month. Under the provisions of the Deed of Trust, regular payments of income were to be made to the beneficiary from the time he reached the age of 21 years until he attains the age of thirty (30) years, at which time the trust will terminate and all the property in the Trust will be turned over to the beneficiary in cash and annuities. Provisions are made for the gift over to other



persons in the event of the death of the beneficiary, with the added provision that under no circumstances is any part of the income or property of the trust to go to the Settlor. The trust is, by its terms, irrevocable, and the Settlor has no power to retake any part of the income or property of the trust, having completely parted with all incidents of ownership in the income and property of the trust;

3. By the terms of said Trust Agreement, said sum of \$42,000.00 was to be invested in the purchase of a forty-two per cent (42%) interest in a special partnership to be organized under the name of "Edward D. Sultan Co.";

4. Upon application duly made in the Circuit Court of the Territory of Hawaii for approval of the said investment, after a hearing thereon, an order was entered in said court under which the Trustees were instructed, authorized and directed to become a special partner in the partnership of Edward D. Sultan Co., upon compliance with the provision of the statutes of the Territory, to make and execute a partnership agreement in the form submitted to the court, and to invest and continue to invest in the said partnership the sum of \$42,000.00 as of or on August 30, 1941;

5. Edward D. Sultan, husband of petitioner, filed a gift tax return for the calendar year 1941, and paid the tax computed thereon. Thereafter, upon examination of the gift tax liability, the Commis-

sioner of Internal Revenue made a determination that, by reason of the fact that the value of the 42% interest in the partnership was greater than \$42,000.00, the amount paid therefor to said Edward D. Sultan was liable for additional gift tax, which deficiency was thereupon paid by him;

6. A special partnership was formed as of August 30, 1941, in the form approved by the court, between Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, general partners, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, special partner, in accordance with the special partnership law of the Territory;

7. Under the terms of the special partnership agreement, all general partners actively engaged in the business of the partnership were to receive compensation for services rendered to the partnership, which compensation was chargeable, for the purpose of computing net profits under the partnership agreement, as an expense of the business. All the remaining net profits were to be divided among all the partners in proportion to the capital investment of each of the partners. The partnership agreement contained the statutory limitations on the powers of the special partner to the effect that only the general partners had the authority to transact the business of the partnership or incur obligations or liabilities on its behalf. The special partner, at all times, could investigate the partnership affairs and

advise and consult with the general partners as to its management;

8. The partnership was duly registered in the office of the Treasurer of the Territory of Hawaii, and all amendments and changes and the final termination were so registered. As required by law, the partnership gave legal notice by publication in newspapers of general circulation of its formation, changes made therein, and, finally, of its dissolution;

9. The Trustees kept themselves fully informed of the affairs of the partnership, advised with the general partners as to the conduct of the business, received periodical statements of income, and kept a close watch on the affairs of the partnership;

10. From the time of its formation until the termination of the partnership, all profits were paid out proportionately to the partners, including the special partner, and upon termination of the said partnership the trust received the full amount of its capital contribution, plus its share of all profits of the partnership to said date, in accordance with the provisions of the partnership agreement;

11. All of the property of the Edward D. Sultan Trust, under agreement between the Trustees, was held in the custody of Bishop Trust Company, Limited, one of the Trustees, which is a Hawaiian corporation duly authorized, among other things, to carry on a trust and fiduciary business, and is subject to examination by banking examiners of the office of the Treasurer of the Territory of Hawaii;

12. The Trustees have invested and reinvested

the funds coming into their hands, taking title to all investments and trust property in the name of the Trustees;

13. The Trustees, at no time before the beneficiary reached the age of 21 years, paid out anything for his support, maintenance or education, and, from and after the time he reached the age of 21 years, the Trustees have paid to the beneficiary the amounts of income provided for in said Deed of Trust;

14. The gross income of said Edward D. Sultan Trust, for the taxable year 1946, included income from said partnership in the amount of \$103,237.57, which income was reported by said Trust for the year 1946, the income tax of said Trust was computed thereon, and said tax was properly paid by said Trust;

15. The Edward D. Sultan Co., a special partnership organized and doing business under the laws of the Territory of Hawaii, composed of Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen, and Gabriel Lewis Sultan, general partners, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, special partner, elected to file its tax returns on an accrual and fiscal year basis ending on the 31st day of January, and filed its first return for the fiscal year ending January 31, 1942.

Wherefore Petitioner Prays that this Court may

hear the proceeding and determine that there is no deficiency due from the petitioner for the year 1946.

/s/ OLGA L. SULTAN,  
MILTON CADES,  
URBAN E. WILD  
J. RUSSELL CADES,  
EDWARD J. GREANERY, C.P.A.,  
Counsel for Petitioner.

Of Counsel:

SMITH, WILD, BEEBE & CADES.

Territory of Hawaii,  
City and County of Honolulu—ss:

Olga L. Sultan, being duly sworn, says that she is the petition above named; that she has read the foregoing petition, or had the same read to her, and is familiar with the statements contained therein; that the statements contained therein are true, except those stated to be upon information and belief, and that those she believes to be true.

/s/ OLGA L. SULTAN,

Subscribed and sworn to before me this 10th day of August, 1949.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires 6-30-53.



EXHIBIT "A"

Form 1230

SN-IT-1

IT:FC:LMJ-150D

Mrs. Olga L. Sultan

Apr. 26, 1949

1025 Alakea Street, Honolulu, T.H.

Madam:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1946 discloses a deficiency of \$17,091.57 as shown in the statement attached.

In according with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 150 days (not counting Saturday, Sunday, or a legal holiday in the District of Columbia as the 150th day) from the date of the mailing of this letter, you may file a petition with the Tax Court of the United States at its principal address, Washington 25, D.C., for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Internal Revenue Agent in Charge, P.O. Box 421, Honolulu 9, T.H., for the attention of IT:FC:LMJ. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest



period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Very truly yours,

GEO. J. SCHOENEMAN,  
Commissioner.

/s/ By H. A. PETERSON,  
Internal Revenue Agent in Charge.

Enclosures: Statement, Form 1276 Form of Waiver.

STATEMENT

Year	Deficiency
1946	\$17,091.57

In making this determination of your income tax liability, careful consideration has been given to the report of examination dated December 4, 1947, to your protest dated June 26, 1948, and to statements made at a conference held on April 12, 1949.

A copy of this letter and statement has been mailed to your representative, Mr. Milton Cades of Smith, Wild, Beebe & Cades, P. O. Box 224, Honolulu 10, T.H., in accordance with the authority contained in the power of attorney executed by you.

Taxable Year Ended December 31, 1946  
Adjustments to Net Income

Net income as disclosed by return . . . . .	\$39,520.68
Unallowable deductions and additional income:	
(a) Partnership income . . . . .	29,455.74
	<hr/>
Total . . . . .	\$68,976.42

Nontaxable income and additional  
deductions:

(b) Tidal wave loss . . . . .	\$3,273.50	
(c) Contributions . . . . .	1,366.46	
(d) Other deductions . . . . .	329.54	4,969.50
		<hr/>
Net income adjusted . . . . .		\$64,006.92

### Explanation of Adjustments

(a) Represents income of the partnership, Edward D. Sultan Company, reported on fiduciary return filed for the Edward D. Sultan Trust, which is held to be taxable to Mr. Edward D. Sultan. Of the total income of \$103,237.57 reported by the trust, one-half of the \$58,911.49 earned after June 1, 1945, or \$29,455.74 is allocated to you under the Hawaii Community Property Law. The partnership reported on a fiscal year basis ending January 31, 1946.

(b) Represents one-half of the tidal wave loss on Kewalo Bay property which was reported on the return of Mr. Edward D. Sultan. Since the property is considered to be your separate property, the full loss of \$6,547.00 is allowable to you, and the above amount claimed on Mr. Sultan's return is eliminated thereon.

(c) Represents contributions made by the Edward D. Sultan Company, a partnership, which were deducted on a fiduciary return filed for the Edward D. Sultan Trust. Since the income of the trust is held to be taxable to Mr. Edward D. Sultan, the contributions are deductible on his return. Of the

total contribution deductions of \$3,539.34 reported by the trust, one-half of \$2,732.93 paid after June 1, 1945, or \$1,366.46, is allocated to you under the Hawaiian Community Property Law.

(d) Represents other deductions, mainly trustee's commissions, paid by the Edward D. Sultan Trust, and deducted on a fiduciary return filed for the trust. Since the income of the trust is held to be taxable to Mr. Edward D. Sultan, these deductions are deductible on his return. Of the total amount of \$1,108.62 deducted by the trust, one-half of \$659.09 paid after June 1, 1945, or \$329.54, is allocated to you under the Hawaii Community Property Law.

#### Computation of Tax

Net Income adjusted .....	\$64,006.92
Less: Exemption .....	500.00
	_____
Balance subject to tax .....	\$63,506.92
	_____
Combined tentative normal tax and sur- tax on \$63,506.92 .....	\$37,055.40
Less: 5% of \$37,055.40 .....	1,852.77
	_____
Correct income tax liability .....	\$35,202.63
Income tax liability disclosed by return, Account No. 918429.....	18,111.06
	_____
Deficiency in income tax .....	\$17,091.57

[Endorsed]: T.C.U.S. Filed Aug. 12, 1949.

[Title of Tax Court and Cause No. 24514.]

### ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for answer to the petition filed by the above-named petitioner admits and denies as follows:

I, II and III. Admits the allegations contained in paragraphs I, II and III of the petition.

IV-1 to 4, inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph IV of the petition and subparagraphs 1 to 4, inclusive, thereunder.

V-1. Admits the allegations contained in subparagraph 1 of paragraph V of the petition.

2 and 3. Denies the allegations contained in subparagraphs 2 and 3 of paragraph V of the petition.

4. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraph 4 of paragraph V of the petition.

V-1. Admits the allegations contained in subparagraph 1 of paragraph V of the petition.

2 and 3. Denies the allegations contained in subparagraphs 2 and 3 of paragraph V of the petition.

4 and 5. For lack of knowledge or information sufficient to form a belief, denies the allegations

contained in subparagraphs 4 and 5 of paragraph V of the petition.

6 to 15, inclusive. Denies the allegations contained in subparagraphs 6 to 15 of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
T. M. MATHER,  
Special Attorney,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed Sept. 27, 1949.

[Title of Tax Court and Cause No. 24513.]

### AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for an amended answer to the petition filed by the above-named petitioner admits and denies as follows:

I, II and III. Admits the allegations contained in paragraph I, II and III of the petition.

IV-1 to 10, inclusive. Denies that the Commissioner erred in the determination of the deficiencies as alleged in paragraph IV of the petition and subparagraphs 1 to 10, inclusive, thereunder.

V-1. Denies the allegations contained in subparagraph 1 of paragraph V of the petition.

2 and 3. Denies the allegations contained in subparagraphs 2 and 3 of paragraph V of the petition.

4 and 5. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs 4 and 5 of paragraph V of the petition.

V-6 to 19, inclusive. Denies the allegations contained in subparagraphs 6 to 19, inclusive, of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.



Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
C. W. NYQUIST,  
R. G. HARLESS,  
Special Attorneys,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed June 20, 1951.

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[Title of Tax Court and Cause No. 24514.]

### AMENDED ANSWER

Comes now the Commissioner of Internal Revenue, respondent above named, by his attorney, Charles Oliphant, Chief Counsel, Bureau of Internal Revenue, and for an amended answer to the petition filed by the above-named petitioner admits and denies as follows:

I, II and III. Admits the allegations contained in paragraphs I, II and III of the petition.

IV-1 to 4, inclusive. Denies that the Commissioner erred in the determination of the deficiency as alleged in paragraph IV of the petition and subparagraphs 1 to 4, inclusive, thereunder.

V-1 to 3, inclusive. Denies the allegations contained in subparagraphs 1 to 3, inclusive, of paragraph V of the petition.

4 and 5. For lack of knowledge or information sufficient to form a belief, denies the allegations contained in subparagraphs 4 and 5 of paragraph V of the petition.

6 to 15, inclusive. Denies the allegations contained in subparagraphs 6 to 15, inclusive, of paragraph V of the petition.

VI. Denies generally and specifically each and every allegation in the petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the Commissioner's determination be approved and the petitioner's appeal denied.

/s/ CHARLES OLIPHANT,  
Chief Counsel, Bureau of Internal  
Revenue.

Of Counsel:

B. H. NEBLETT,  
Division Counsel;  
C. W. NYQUIST,  
R. G. HARLESS,  
Special Attorneys,  
Bureau of Internal Revenue.

[Endorsed]: T.C.U.S. Filed June 20, 1951.

[Title of Tax Court and Causes No. 24513-4.]

## STIPULATION OF FACTS

It is Hereby Stipulated and Agreed, by and between the parties hereto, by their respective attorneys, that the following facts shall be taken as true and may be received by the Court in evidence with the same force and effect as if the facts herein contained were testified to by competent witnesses; provided, however, that this stipulation shall be without prejudice to the right of either party to introduce other or further evidence not inconsistent with the facts herein stipulated as true:

### I.

That petitioners Edward D. Sultan and Olga L. Sultan are, and were at all times material to this proceeding, husband and wife and residents of the Territory of Hawaii.

### II.

That petitioners have one child, Edward D. Sultan, Jr., (whose name was changed from Edward Dolph Sultan), born December 28, 1927.

### III.

That petitioner, Edward D. Sultan, on August 28, 1941, created the Edward D. Sultan Trust, naming Ernest Walter Sultan and Bishop Trust Company, Limited, a corporation organized under the laws of the Territory of Hawaii, as Trustees. A true copy of Trust Indenture, dated the 28th day of August, 1941, marked Exhibit 1, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## IV.

That the Trustees of the Edward D. Sultan Trust, on September 5, 1941, filed on Petition for Authority to Make Investment in the First Circuit Court of the Territory of Hawaii, being Equity No. 4245, at Chambers, in Equity, and, on September 9, 1941, Louis LeBaron Judge of said court duly entered an Order granting the request in said Petition. True copies of said Petition for Authority to Make Investment and Order, marked Exhibits 2 and 3, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## V.

That a document entitled a Special Partnership Agreement, dated the 30th day of August, 1941, was duly executed by Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, described as General Partners therein and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, described as Special Partner therein. A true copy of said Special Partnership Agreement, marked Exhibit 4, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## VI.

That a Bill of Sale, dated as of the close of business on August 30, 1941, was duly executed by Edward D. Sultan, as Seller. A true copy of said Bill of Sale, marked Exhibit 5, is attached hereto, in-

corporated herein by reference, and made a part hereof for all purposes.

#### VII.

That on October 24, 1941, a duly executed Certificate of Special Partnership and Affidavits of Edward D. Sultan and Ernest Walter Sultan, of Marie Hilda Cohen and Gabriel Lewis Sultan, of W. A. White, and of Ernest Walter Sultan, required by Section 6875, Revised Laws of Hawaii 1935, were duly filed in the Office of the Treasurer of the Territory of Hawaii in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935. A true copy of said Certificate and Affidavits, marked Exhibit 6, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### VIII.

That a Statement of Substance of Certificate of Special Partnership was duly published in The Honolulu Advertiser on October 31, November 3, 7 and 10, 1941.

#### IX.

That on or before March 15, 1942, Petitioner Edward D. Sultan filed a gift tax return for the calendar year 1941, reporting therein a gift of \$42,000.00 to the Edward D. Sultan Trust. Thereafter, upon examination of said gift tax return, the Commissioner of Internal Revenue made a determination that by reason of the fact that the value of the 42% interest in the partnership, acquired by the Edward D. Sultan Trust from petitioner Edward D. Sultan,



was greater than \$42,000.00, petitioner Edward D. Sultan was liable for additional gift tax in the amount of \$81.99, which deficiency was thereupon paid by petitioner Edward D. Sultan.

### X.

That a document entitled Amendment to Special Partnership Agreement, dated Jan. 12, 1942, was duly executed by Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, described as General Partners therein, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor, described as Special Partner therein. A true copy of said Amendment to Special Partnership Agreement, marked Exhibit 7, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

### XI.

That a document entitled Amendment to Special Partnership Agreement, dated June 9, 1942, was duly executed by Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, described as General Partners therein, and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor, described as Special Partner therein. A true copy of said Amendment to Special Partnership Agreement, marked Exhibit 8, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.



## XII.

That a document entitled Amendment to Special Partnership Agreement, dated February 2, 1945, was duly executed by Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, described as General Partners therein and Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor, described as Special Partner therein. A true copy of said Amendment to Special Partnership Agreement, marked Exhibit 9, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XIII.

That in January, 1949, petitioner Edward D. Sultan acquired from Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, all of their interest in Edward D. Sultan Co., and a Bill of Sale, dated the . . . . day of . . . . ., 1949 (showing notarial acknowledgments of the various assignors on the 26th and 28th days of January, 1949), was duly executed by Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan. A true copy of said Bill of Sale, marked Exhibit 10, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XIV.

That in a letter dated February 1, 1949, petitioner Edward D. Sultan offered to purchase from the Edward D. Sultan Trust its 42% interest in Ed-

ward D. Sultan Co. By a letter dated February 9, 1949, the offer was accepted upon approval and consent of the petitioner Edward D. Sultan, as Settlor, and Edward D. Sultan, Jr. (who had then attained his majority). True copies of letter of Edward D. Sultan to the Trustees of the Edward D. Sultan Trust dated February 1, 1949, and letter of Bishop Trust Company, Limited, to Edward D. Sultan dated February 9, 1949, marked Exhibits 11 and 12, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XV.

That in order to carry out the agreement set forth in paragraph XIV hereinabove, a Bill of Sale, dated as of the close of business on January 31, 1949, was executed by Edward D. Sultan Co., as Seller, and Edward D. Sultan, Olga L. Sultan, and Edward D. Sultan, Jr., copartners doing business under the firm name and style of Edward D. Sultan Co., as Purchaser. A true copy of said Bill of Sale, marked Exhibits 13, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

#### XVI.

That a Statement of Dissolution of the Special Partnership of Edward D. Sultan Co. was duly filed in the Office of the Treasurer of the Territory of Hawaii on March 11, 1949. A true copy of said Statement, marked Exhibit 14, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XVII.

That Notice of Dissolution of Special Partnership of Edward D. Sultan Co. was duly published in The Honolulu Advertiser on March 12, 19, 26, and April 2, 1949.

## XVIII.

That Edward D. Sultan Co. filed its partnership tax returns on an accrual and fiscal year basis ending on the 31st day of January, and filed its first return on that basis for the fiscal year ended January 31, 1942. Photostatic copies of the returns filed by Edward D. Sultan Co. for the fiscal periods ended January 31, 1942, January 31, 1943, January 31, 1944, January 31, 1945, January 31, 1946, January 31, 1947, January 31, 1948 and January 31, 1949, marked or to be marked Exhibits 15, 16, 17, 18, 19, 20, 21 and 22, are either attached hereto or will be furnished by Counsel for respondent, and incorporated herein by reference, and made a part hereof for all purposes.

## XIX.

That Schedules showing the income and expenses for the period from September 1, 1941 to January 31, 1951, the payments received by the Edward D. Sultan Trust as distributions of its share of income of Edward D. Sultan Co., and the inventory of assets of the Edward D. Sultan Trust at January 31, 1951, as shown by the books and records of said Trust, marked Exhibits 23, 24 and 25, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XX.

That Edward D. Sultan Trust duly filed federal fiduciary tax returns each year and duly paid the tax shown to be due thereon. A Schedule showing the items of income and deductions, marked Exhibit 26, is attached hereto, incorporated herein by reference, and made a part hereof for all purposes. Photostatic copies of the fiduciary tax returns filed by said Edward D. Sultan Trust for the years 1942, 1943, 1944, 1945, 1946, for the fiscal years ended Sept. 30, 1947 as originally filed and as amended, 1948, 1949 and 1950, marked or to be marked Exhibits 26, 27, 28, 29, 30, 30A, 31, 32, 33 and 34, respectively, are attached hereto or will be furnished by Counsel for respondent, incorporated herein by reference, and made a part hereof for all purposes.

## XXI.

That photostatic copies of the tax returns filed by petitioner Edward D. Sultan, for the years 1944, 1945 as originally filed and as amended, and 1946, and by petitioner Olga L. Sultan, for the years 1945 and 1946, marked Exhibits 35, 36, 36A, 37, 38, and 39, respectively, are attached hereto, incorporated herein by reference, and made a part hereof for all purposes.

## XXII.

That by virtue of the Hawaiian Community Property Law, which became effective as of June 1, 1945, petitioner Olga L. Sultan, was entitled to one-half of all of the income of her husband, petitioner Edward D. Sultan, from and after that date.

XXIII.

That the entire amount of the deficiency asserted against petitioner Olga L. Sultan arises by reason of her community property interest in the income of her husband, petitioner Edward D. Sultan.

/s/ MILTON CADES,

Counsel for Petitioner,

/s/ CHARLES OLIPHANT,

Chief Counsel, Bureau of Internal

Revenue, Counsel for Respondent.

EXHIBIT No. 1

(Trust Deed—Edward S. Sultan Trust)

This indenture made this 28th day of August, 1941, by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Settlor", and Ernest W. Sultan, of Honolulu aforesaid, and Bishop Trust Company, Limited, a Hawaiian corporation, hereinafter called the "Trustees,"

Witnesseth That:

The Settlor, in consideration of the love and affection he bears for the beneficiaries and of the acceptance by the Trustees of the trust herein created, does hereby transfer, set over and deliver to the Trustees, their successors in trust and assigns, the sum of Forty-Two Thousand and No/100ths Dollars (\$42,000.00) lawful money of the United States of America,

To have and to hold the same, together with all



## Exhibit No. 1—(Continued)

other property which may hereafter be or become a part of the trust estate hereby created, unto the Trustees and their successors in trust, in trust, nevertheless, for the uses and purposes hereafter stated, that is to say:

(a) The Trustees shall purchase for the said sum of Forty-two Thousand and No/100ths Dollars (\$42,000.00) a forty-two per cent (42%) interest in the partnership known as "Edward D. Sultan Co." a partnership duly organized and operating under that certain special partnership agreement dated August 30, 1941, and continue to a special partner in such partnership, said sum being the fair and reasonable value of said interest duly ascertained as of August 30, 1941;

(b) The Trustees shall accumulate all net income from said trust estate until Edward Dolph Sultan, son of the Settlor (born December 28, 1927) shall reach the age of twenty-one (21) years, provided, however, that the Trustees, during such time, may in their sole discretion, pay out of the net income of the said trust estate to Edward Dolph Sultan, or for his use and benefit, such amounts as may be necessary for his maintenance, support and education, but in no event shall they pay out to Edward Dolph Sultan, or for his account, any amount in excess of Three Thousand Six Hundred and No/100ths Dollars (\$3,600.00) in any calendar year;

(c) The Trustees shall pay out of the net income from the said trust estate to Edward Dolph Sultan, upon his reaching the age of twenty-one (21) years



## Exhibit No. 1—(Continued)

and until the termination of this trust, the sum of Three Hundred and No/100ths Dollars (\$300.00) per month;

(d) The Trustees shall pay, in addition to the foregoing, one-half ( $1/2$ ) of the accumulated net income from said trust estate but not in excess of the sum of Ten Thousand and No/100ths Dollars (\$10,000.00), to Edward Dolph Sultan when he shall attain the age of twenty-five (25) years, provided, however, that in the event there is not sufficient cash included in the assets of said trust estate at the time that such payment becomes due and payable, the Trustees may satisfy this obligation by transferring, assigning and setting over to said Edward Dolph Sultan their right to receive any sums of money that may be due them as a special partner from the partnership of Edward D. Sultan Co., or any other asset owned by them as such trustees;

(e) This trust shall cease and determine at the time that Edward Dolph Sultan shall attain the age of thirty (30) years, or upon the death of said Edward Dolph Sultan, whichever event shall first occur. In the event that Edward Dolph Sultan shall attain the age of thirty (30) years, the Trustees shall thereupon transfer, set over and deliver to him the property then comprising the trust estate, together with any cash not in excess of Twenty Thousand Dollars (\$20,000.00) that might then be included in the assets representing accumulated income, and any remaining balance of cash representing accumulated income shall be used by the Trus-

## Exhibit No. 1—(Continued)

tees for the purchase of an annuity policy or policies in such insurance company or companies as the Trustees may designate and in such form as the Trustees may deem advisable, providing for periodic payments to said Edward Dolph Sultan during his life. In the event said Edward Dolph Sultan shall die before he attains the age of thirty (30) years then this trust shall be terminated and upon such termination the said trust estate, together with all accumulated income shall vest in Olga Linczer Sultan provided that she is still married to and living with the Settlor, or, in the event that the Settlor shall have died prior to such time, provided that the said Olga Linczer Sultan was married to and living with the Settlor at the time of his death and has not thereafter remarried, otherwise upon such termination the said trust estate, together with all accumulated income, shall vest in equal shares to those who shall survive the Settlor of his sister, Marie Hilda Cohen, of San Francisco, California, his brother, Gabriel Lewis Sultan, of said San Francisco, and his brother, Ernest Walter Sultan, and the lawful issue of any of them who shall be deceased at such time (said issue to take per stirpes and not per capita), absolutely and in fee simple;

(f) The Trustees shall receive, hold, manage and control the said trust estate, collect the income therefrom and pay all charges incident to trust estates and properly payable by said trust estate therefrom, and the Settlor authorizes the Trustees to retain, either permanently or temporarily or for such pe-

## Exhibit No. 1—(Continued)

riod of time as they may deem expedient, any property conveyed, assigned or delivered to the Trustees by the Settlor of whatever nature, and the Settlor directs that the said Trustees shall not be held liable for any loss resulting to said trust estate by reason of the Trustees' retaining any such property, or for any error of judgment in this respect;

(g) The Settlor authorizes and empowers the Trustees to sell at public or private sale, convert, transfer, exchange, mortgage, hypothecate and otherwise deal in or dispose of the whole or any part of the property, real, personal or mixed, which may be from time to time a part of the trust estate, with power to accept any purchase money mortgage or mortgages for any part of the purchase or exchange price; and to invest and reinvest the whole or any part of the assets of the said trust estate, and in investing and reinvesting any assets of said trust estate the Trustees may invest in common or preferred stocks of corporations, bonds, notes, debentures, participation or investment certificates and/or in other property, real or personal, in so far as in their judgment they shall deem such investments advisable, it being the intention of the Settlor, under the foregoing provisions, to grant to the Trustees full power to invest and reinvest money in such investments as they shall deem desirable and suitable investments for trust funds without being restricted to the classes of investments which trustees are permitted by law to make, provided, however, that the Trustees shall obtain the consent of

## Exhibit No. 1—(Continued)

the Settlor to make such investments during his life-time, and provided further that in the event the Settlor shall die before the termination hereof the Trustees shall thereafter be restricted in the making of investment of trust funds to the classes of investments which trustees are permitted by law to make, except that in any event the Trustees may, without liability for any losses resulting therefrom, make advances or loans to the partnership of Edward D. Sultan Co. The Settlor authorizes and empowers the Trustees, upon any increase of the capital stock of any corporation in which said trust estate shall own shares, to exercise any preemptive rights to such shares to which said trust estate may be entitled and/or to subscribe for such additional shares as in the judgment of the Trustees shall be an advisable investment; and for this purpose or for other purposes of this trust the Settlor authorizes and empowers the Trustees to borrow money, either from themselves or from others, and upon such terms and conditions as they may deem appropriate. The Trustees shall have the right and power to vote either directly or by proxy the stock of any corporation that may be a part of said trust estate from time to time at all meetings of stockholders as the Trustees may deem best;

(h) Stock dividends shall be treated as capital of the trust estate and all stock acquired by the Trustees under the exercise of rights to subscribe or the net proceeds realized by the Trustees from the sale of rights to subscribe shall be treated as capital of



## Exhibit No. 1—(Continued)

the trust estate, and all other corporate distributions shall be treated as income; provided, however, that where a distribution is made through reduction of the par value of any corporate stock held by the Trustees, or, in the exclusive discretion of the Trustees, it appears to be made in or as a result of a partial or complete liquidation or dissolution of the corporation, the Trustees may in their discretion make such apportionment of any such distribution between income and capital as to them may seem just; the Trustees shall have full power and authority to decide and determine in all doubtful cases what property or moneys received by them is capital and what is income; and also, in all doubtful cases, to decide and determine what expenses and other charges are payable out of income and what out of capital; and also, in all doubtful cases, to decide and determine what proportion of payments for expenses of or charges against the trust estate are payable from income and what from capital; and all beneficiaries shall be bound by the decision and determination of the Trustees in regard to all such allocations between capital and income. The Trustees shall have authority, in their discretion, to pro-rate during the year and withhold from the income received by the trust estate an amount sufficient to pay proportionate shares of the expenses payable by the trust estate so that said payments of net income may be more regular and even in amount;

(i) The Settlor may transfer, convey and assign to the Trustees any property in addition to that

## Exhibit No. 1—(Continued)

hereinabove referred to, to be held upon the trust hereby created, and thereafter such additional property shall be and form a part of the trust estate;

(j) The Trustees shall render annual statements of account to the persons who are the beneficiaries of this trust, as hereinabove provided, but the Trustees shall not be required to account in any court unless requested so to do by a beneficiary;

(k) If any person entitled to receive any of the income and/or capital of the trust estate shall be a minor, the Trustees may pay the share of income and/or capital to which said minor is entitled to either parent or to the natural or legally appointed guardian of such minor, and the receipt of such parent or natural or legally appointed guardian shall be a complete release, discharge and acquittance of the Trustees to account further for any payment or payments so made, and if any beneficiary is a minor, the statements of account may be furnished to either parent of or to the natural or legally appointed guardian of such minor beneficiary;

(1) Bishop Trust Company, Limited, the corporate Trustee hereunder, shall have the custody and safekeeping of all moneys and securities belonging to the trust estate which are received or collected by the Trustees. Neither Trustee hereunder shall be answerable or accountable for any act of the other Trustee in which he or it shall not participate, nor for the custody of any property except as shall come to his or its own possession or personal con-



## Exhibit No. 1—(Continued)

trol, nor for any loss or damage resulting from any error of judgment or otherwise except through his or its own gross neglect or wilful default. Nor shall the Trustees or either of them be answerable or accountable for any loss or damage resulting from any act consented to by the Settlor or for any loss or damage resulting from any investment in or loan or advance to the partnership of "Edward D. Sultan Co.";

(m) In the event that Ernest W. Sultan shall be or become unable to act or shall decline to act or shall resign his office as Trustee hereunder, or from and after the death of said Ernest W. Sultan prior to the termination of the trust, then and in any of such events Marie Hilda Cohen of San Francisco, California shall be substituted as Trustee in the place and stead of said Ernest W. Sultan, and title to all property then comprising the trust estate shall be vested in Marie Hilda Cohen and Bishop Trust Company, Limited, as Trustees, without any conveyance or vesting order, and in the event that Marie Hilda Cohen shall be or become unable to act or shall decline to act or shall resign her office as Trustee hereunder, or from and after the death of said Marie Hilda Cohen prior to the termination of the trust, then and in any of such events, Bishop Trust Company, Limited, shall act as sole Trustee hereunder and title to all of the property then comprising the trust estate shall be vested in said Bishop Trust Company, Limited, as sole Trustee, without any conveyance or vesting order;

## Exhibit No. 1—(Continued)

(n) It is hereby declared that this agreement shall be and is hereby made irrevocable by the Settlor, and the Settlor reserves the right to amend this instrument by adding other property to be and become a part of the estate held under the terms hereof, and the right to alter, amend, cancel or revoke any provisions of this instrument, save and except paragraph (a), (b), (c), (d) and (e) hereof; provided, however, that in no event shall any of the property or the income thereof belonging to the trust estate be paid to or inure to the benefit of the Settlor, and provided further that any amendments made by the Settlor shall be made by instrument in writing and acknowledged and filed with the Trustees and that the alteration, amendment, cancellation or revocation of any provision of this instrument shall be made only with the written consent and approval of the Trustees and of Edward Dolph Sultan after the said Edward Dolph Sultan shall have come of age;

(o) In the event that upon due application therefor in accordance with the provisions of law, the court having jurisdiction thereof does not approve of the investment by the Trustees herein of the aforesaid sum of Forty-two Thousand and No/100ths Dollars (\$42,000.00) in the purchase of a forty-two per cent (42%) interest in said "Edward D. Sultan Co." and of the Trustees' continuing to be special partners in said partnership on order duly entered within sixty (60) days from the date hereof, then

Exhibit No. 1—(Continued)

this indenture shall be null and void and of no force and effect whatsoever.

The said Ernest W. Sultan and Bishop Trust Company, Limited, hereby accept the within trust and covenant and agree with the Settlor that they will faithfully discharge and carry out the same.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

/s/ EDWARD D. SULTAN,  
Settlor.

/s/ ERNEST W. SULTAN.  
BISHOP TRUST COMPANY,  
LIMITED,

/s/ By W. A. WHITE,  
Its Vice President.

/s/ By E. BENNER, Jr.  
Its Asst. Vice Pres.  
Trustees.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 28th day of August, 1941, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

## Exhibit No. 1—(Continued)

Territory of Hawaii,

City and County of Honolulu—ss:

On this 28th day of August, 1941, before me personally appeared Ernest W. Sultan, one of the Trustees mentioned in the foregoing instrument, to me known to be the person described in and who executed the foregoing instrument as Trustee and acknowledged that he executed the same as his free act and deed as such Trustee.

[Seal]           /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,

City and County of Honolulu—ss.

On this 30th day of August 1941, before me appeared W. A. White and E. Benner, Jr. to me personally known, who being by me duly sworn, did say that they are Vice-President and Assistant Vice-President, respectively of Bishop Trust Company, Limited, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors and said W. A. White and E. Benner Jr., acknowledged said instrument to be the free act and deed of said corporation.

[Seal]           /s/ PHILIP H. LEVEY,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

EXHIBIT No. 2

In the Circuit Court of the First Judicial Circuit  
Territory of Hawaii

Eq. No. 4245.

In the Matter of the Trust Estate created by In-  
denture of Trust dated August 28, 1941, of ED-  
WARD D. SULTAN.

PETITION FOR AUTHORITY TO  
MAKE INVESTMENT

At Chambers in Equity.

To the Honorable Presiding Judge at Chambers,  
in Equity, of the Above Entitled Court:

Come now Ernest W. Sultan, and Bishop Trust  
Company, Limited, a Hawaiian corporation, Trus-  
tees of the Trust Estate created by Indenture of  
Trust dated August 28, 1941, of Edward D. Sultan,  
Petitioners herein, and show unto this Honorable  
Court as follows:

I.

That Petitioners are the Trustees under that  
certain Indenture of Trust dated August 28, 1941,  
made by and between Edward D. Sultan as Settlor  
and said Petitioners, as Trustees, a copy of which  
said Indenture of Trust is annexed hereto, marked  
Exhibit "A" and incorporated herein by reference.

II.

That Edward D. Sultan is presently engaged in  
the wholesale jewelry business and is operating  
said business at a profit, and that substantially all



## Exhibit No. 2—(Continued)

of his assets and property are used in the operation of said business.

## III.

That said Edward D. Sultan is desirous of encouraging his son, Edward Dolph Sultan (born December 28, 1927), to take an interest in said business when his son reaches an appropriate age therefore, and also of providing an estate for his said son which can be added to from time to time for the future care and support of said son, and for that purpose has executed the aforesaid Indenture of Trust.

## IV.

That said Edward D. Sultan has agreed to and with Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan to enter into a special partnership agreement for the purpose of acquiring and thereafter conducting the business theretofore carried on by said Edward D. Sultan from and after the close of business on August 30, 1941, provided that said trust estate created by said aforementioned Indenture of Trust be a special partner thereto, owning a forty-two per cent (42%) interest in the capital thereof; that a copy of said proposed partnership agreement is annexed thereto, marked Exhibit "B" and incorporated herein by reference.

## V.

That the assets and property of said Edward D. Sultan, used in the said wholesale jewelry business, having been determined as of the close of business



## Exhibit No. 2—(Continued)

on August 30, 1941, to be of the net value of \$100,000.00, and constituting substantially all of the assets and property of said Edward D. Sultan, are proposed to be transferred to the said special partnership.

## VI.

That said Indenture of Trust provides for the transfer to the Trustees of the sum of Forty-Two Thousand Dollars (\$42,000.00), which said sum is to be used by the Trustees for the purchase of a forty-two per cent (42%) interest in the partnership to be known as "Edward D. Sultan Co." and provides that said Indenture of Trust shall be null and void and of no force and effect in that event that upon due application therefor, in accordance with the provisions of law, the court of law having jurisdiction thereof does not approve of the investment by the Trustees therein of the said sum of \$42,000.00 for the purchase of the 42% interest in said special partnership.

## VII.

That Petitioners believe that it is for the best interest of the trust estate that the Trustees be authorized to become a special partner in the partnership of Edward D. Sultan Co. and that the Trustees be authorized to contribute, under the terms and provisions of Chapter 225, Revised Laws of Hawaii 1935, and invest in said partnership the sum of \$42,000.00, together with any increase or profits required to remain in said partnership under the terms of the partnership agreement to be entered into.

## Exhibit No. 2—(Continued)

Wherefore Your Petitioners Pray that this Court do authorize said Petitioners to become a special partner in the partnership of Edward D. Sultan Co. upon compliance with the terms and provisions of said Chapter 225 of the Revised Laws of Hawaii 1935; that it authorize said Petitioners as Trustees as aforesaid to make and execute a partnership agreement substantially in the form attached to this petition which is marked Exhibit "B"; and that said Petitioners be authorized to invest in the said partnership of Edward D. Sultan Co. the sum of Forty-Two Thousand Dollars (\$42,000.00) for the purchase of a forty-two per cent (42%) interest in said partnership having an appraised value of One Hundred Thousand Dollars (\$100,000.00) as of or on August 30, 1941, together with any increase or profits required to remain in said partnership under the terms of said partnership agreement to be entered into; and that said Petitioners may have such further instructions as may be proper in the premises.

Dated: Honolulu, T. H., this 5th day of September, 1941.

/s/ ERNEST W. SULTAN,  
BISHOP TRUST COMPANY,  
LIMITED,

/s/ By W. A. WHITE, Its Vice President,

/s/ By D. W. ANDERSON, Its Vice-Pres.

Trustees of the Trust Estate created by Indenture of Trust dated August 28, 1941, of Edward D. Sultan.

Exhibit No. 2—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss:

Ernest W. Sultan, being first duly sworn, on oath deposes and says: That he is one of the Trustees under the Indenture of Trust dated August 28, 1941, aforementioned, one of the Petitioners named in the foregoing Petition, that he has read the foregoing Petition, knows the contents thereof and that the same is true.

/s/ ERNEST W. SULTAN.

Subscribed and sworn to before me this 5th day of September, 1941.

[Seal]            /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

[Endorsed]: Filed Sept. 5, 1941.

## EXHIBIT No. 3

In the Circuit Court of the First Judicial Circuit,  
Territory of Hawaii

Eq. No. 4245.

In the Matter of the Trust Estate created by Indenture of Trust dated August 28, 1941, of EDWARD D. SULTAN.

At Chambers, in Equity.

## ORDER

The Petition of Ernest W. Sultan and Bishop Trust Company, Limited, Trustees of the Trust Estate, created by Indenture of Trust dated August 28, 1941, of Edward D. Sultan, praying that they be authorized to become a special partner in the partnership of Edward D. Sultan Co., upon compliance with the provisions of Chapter 225 of the Revised Laws of Hawaii 1935, that they be authorized as Trustees as aforesaid to make and execute a partnership agreement substantially in the form attached to the petition and marked Exhibit "B", and that they be authorized to invest in the said partnership of Edward D. Sultan Co. the sum of Forty-Two Thousand Dollars (\$42,000.00) for the purchase of a forty-two per cent (42%) interest in said partnership having an appraised value of One Hundred Thousand Dollars (\$100,000.00) as of or on August 30, 1941, together with any increase or profits required to remain in said partnership under the terms of the partnership agreement to

## Exhibit No. 3—(Continued)

be entered into, having come on for hearing before me this 9th day of September, 1941; and

Evidence having been adduced by the Petitioners in said cause that it is to the best interest of the Trust Estate and of the beneficiaries therein that Ernest W. Sultan and Bishop Trust Company, Limited, as Trustees as aforesaid, be authorized to become a special partner in the partnership of Edward D. Sultan Co.; that the contribution of the Trustees under the terms and provisions of Chapter 225 of the Revised Laws of Hawaii, 1935 should be the amount of Forty-Two Thousand Dollars (\$42,000.00); and

It appearing to the satisfaction of the Court that the prayer of the Petitioners should be granted and no good cause appearing why it should not be granted,

Now, therefore, it is hereby ordered, adjudged and decreed that Ernest W. Sultan and Bishop Trust Company, Limited, Trustees as aforesaid, be and they hereby are instructed, authorized and directed to become a special partner in the partnership of Edward D. Sultan Co. upon compliance with the provisions of Chapter 225 of the Revised Laws of Hawaii, 1935, to make and execute a partnership agreement substantially in the form attached to the Petition and marked Exhibit "B", and to invest and/or continue to invest in the said partnership of Edward D. Sultan Co. the sum of Forty-Two Thousand Dollars (\$42,000.00) for the purchase of a forty-two per cent (42%) interest in



## Exhibit No. 3—(Continued)

said partnership having an appraised value of One Hundred Thousand Dollars (\$100,000.00 as of or on August 30, 1941, together with any increase or profits required to remain in said partnership under the terms of the partnership agreement to be entered into.

Dated: Honolulu, T.H., this 9th day of September, 1941.

[Seal] /s/ LOUIS LeBARON,  
Judge of the above entitled Court,  
at Chambers, in Equity.

Attest:

/s/ JAMES K. TRASK,  
Clerk of the above entitled Court.

I do hereby certify that the foregoing is a full, true and correct copy of the original on file in this office.

[Seal] /s/ JAMES K. TRASK,  
Clerk, Circuit Court, First Circuit  
Territory of Hawaii.

[Endorsed]: Filed Sept. 9, 1941.



## EXHIBIT No. 4

(Partnership Agreement—Edward D. Sultan Trust)

This Special Partnership Agreement, dated this 30th day of August, 1941, made by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, Ernest Walter Sultan, of Honolulu aforesaid, Marie Hilda Cohen of San Francisco, California, and Gabriel Lewis Sultan, of San Francisco aforesaid (hereinafter referred to as "General Partners"), and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28th, 1941, made by Edward D. Sultan, as Settlor, and recorded in the Bureau of Conveyances at Honolulu, Territory aforesaid, in Book . . . ., Page . . . .(hereinafter referred to as the "Special Partner"),

Witnesseth That:

Whereas the parties hereto, having mutual confidence in each other, do hereby form with each other a special partnership for the purpose of acquiring and thereafter conducting the business heretofore carried on by Edward D. Sultan from and after the close of business on August 30, 1941, and for other purposes as hereinafter provided, upon the following terms and conditions, that is to say:

1. Purposes: The purposes of the partnership shall be to acquire as at the close of business on August 30, 1941, all assets and to carry on the business heretofore carried on and conducted by Edward D. Sultan; to buy, sell, import, export, trade and

## Exhibit No. 4—(Continued)

deal in jewelry, watches, gems, precious and semi-precious stones, and goods, wares and merchandise of every kind or nature and to engage in and carry on the business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers; to buy or otherwise acquire, own, hold, use, improve, develop, mortgage, lease or take on lease, sell, convey and in any and every other manner deal in and with and dispose of real estate, buildings and other improvements, hereditaments, easements and appurtenances of every kind in connection therewith, or any estate or interest therein of any tenure or description, to the fullest extent permitted by law, and also any and all kinds of chattels, goods, wares, merchandise and agricultural, manufacturing and mercantile products and commodities, and patents, licenses, debentures, securities, stocks, bonds, commercial paper, and other forms of assets, rights and interests and evidences of property or indebtedness, tangible, or intangible; to undertake and carry on any business investment, transaction, venture or enterprise which may lawfully be undertaken or carried on by a partnership, and any business whatsoever which may seem to the partnership convenient or suitable to be undertaken whereby directly or indirectly to promote any of its general purposes or interests or render more valuable or profitable any of its property, rights, interests or enterprises; and to acquire by purchase, lease or otherwise the property, rights, franchises, assets, business and

## Exhibit No. 4—(Continued)

good will of any person, firm, association or corporation engaged in or authorized to conduct any business or undertaking which may be carried on by this partnership or possessed of any property suitable or useful for any of its own purposes and carry on the same, and undertake all or any part of the obligations and liabilities in connection therewith on such terms and conditions and for such consideration as may be agreed upon, and to pay for the same either all or partly in cash, stocks, bonds, debentures or other forms of assets or securities; and to effect any such acquisition or carry on any business authorized by this agreement either by directly engaging therein or indirectly by acquiring the shares, stocks or other securities of such other business or entity, and holding and voting the same and otherwise exercising and enjoying the rights and advantages incident thereto, and such other business as may be necessary, suitable or proper to the accomplishment of their purposes or connected or related thereto as the partners from time to time mutually may agree.

2. Name: The partnership shall be conducted and carried on under the firm name and style of Edward D. Sultan Co., and the place or places of business shall be at Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places as the partners may from time to time determine.

3. Capital: The Capital of the partnership as of the date of the commencement of the term provided

## Exhibit No. 4—(Continued)

for in this agreement shall be the sum of One Hundred Thousand Dollars (\$100,000.00), which amount has been determined by the appraisal of the assets transferred to the partnership as of August 30, 1941, and it is agreed that the contributions of capital of each of the partners to this agreement shall be as follows:

	Interest	Interest & %
Edward D. Sultan . . . . .	\$46,000.00	46%
Ernest Walter Sultan . . . . .	4,000.00	4%
Marie Hilda Cohen . . . . .	4,000.00	4%
Gabriel Lewis Sultan . . . . .	4,000.00	4%
Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust of Edward D. Sultan, dated . . . . .	42,000.00	42%

It is understand and agreed that Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees as aforesaid, shall be a Special Partner in their capacity as Trustees and not individually, and shall have all of the powers, rights and duties of special partners as prescribed by Chapter 225 of the Revised Laws of Hawaii 1935 as the same now is or as the same may from time to time be amended, and that the Special Partner shall not be liable for the debts of the partnership to any extent beyond that set forth in the provisions of Section 6887 of the Revised Laws of Hawaii 1935 as the same



## Exhibit No. 4—(Continued)

now is or as the same may from time to time be amended.

4. Compensation of General Partners and Division of Profits: From time to time and as the General Partners may agree, the General Partners actively engaged in the business of the partnership shall receive as compensation for services rendered to the partnership a salary chargeable, for purposes of computing net profits hereunder, as an expense of the business, in such amount as the General Partners from time to time shall agree upon, constituting the reasonable value of the services rendered to the partnership. So long as he continues to be active in the business of the partnership, there shall be paid to said Ernest Walter Sultan, out of the net profits of the partnership, twenty-five per cent (25%) thereof. All of the remaining net profits of the partnership shall be divided for each annual period in proportion to the above stated interest of each of the partners, including the said Ernest Walter Sultan, in the original capital of the partnership, and all losses of the partnership for each annual period shall be divided among the partners in the same manner as herein provided for the division of profits. Any partner may withdraw from the partnership such portion of the profits attributable to the partner's interest as the General Partners may from time to time deem advisable. Amounts not withdrawn shall not be added to the capital account but shall be credited to advance accounts in the names of the respective partners for whom said

## Exhibit No. 4—(Continued)

amounts are being held and interest at the rate of five per cent (5%) per annum computed on quarterly balances beginning as of May 1, 1942, and chargeable for the purposes of computing net profits hereunder as an expense of the business, shall be credited to said accounts.

5. Services of the Partners: General Partners, Edward D. Sultan and Ernest Walter Sultan shall diligently give their full time, attention and services to the business of the partnership and shall be faithful to the partnership in all transactions relating to said business. Neither of said General Partners shall engage in any business except that of said partnership or on account thereof and no partner shall, without the written consent of all of the partners, employ the capital or credit of the partnership in any other business than that of the partnership, and no partner shall, during the continuation of the partnership carry on or be concerned or interested directly or indirectly in any other business which is in direct competition to the business of the partnership.

6. Bankers of the Partnership: The bankers of the partnership shall be Bishop National Bank of Hawaii at Honolulu or such other bankers as the partners shall from time to time determine, and all money and money instruments received by and belonging to the partnership shall be deposited to the credit of the partnership account with the partnership bankers except that such a petty cash fund



## Exhibit No. 4—(Continued)

as may be mutually agreed upon between the General Partners from time to time may be kept on hand for use in the business.

7. Limitation on Powers of Partners: The General Partners only shall have authority to transact the business of the partnership or incur obligations or liabilities. In all matters except as otherwise provided in this agreement the determination by the General Partner or Partners owning the majority in interest of the capital contributed by the General Partners shall be binding upon and shall establish the policy of the partnership. The Special Partner at all times may investigate the partnership affairs and advise the General Partners as to its management. No partner shall, without the consent of the other partners, draw, accept or assign any bill of exchange or promissory note or contract any debt on account of the partnership or employ any of the moneys or effects thereof or in any manner pledge the credit thereof except in the usual and regular course of the business subject to the provisions of this agreement. No partner during the continuation of this partnership without obtaining the consent thereto of the other partners shall assume any liability for another or others by means of endorsement or by becoming guarantor, surety, or insurer, and each of the General Partners agree at all times to keep indemnified the other partners and their personal representatives and the property of the partnership against any liability for or in connection with his present and future separate debts and

## Exhibit No. 4—(Continued)

engagements or actions, proceedings, claims, and demands in respect thereof.

8. Partners not to Assign Interest: No General Partner shall assign or mortgage his or her share of or interest in or any part of the share of or interest in the partnership or the assets or profits thereof, Provided, however, that any partner may purchase all or any part of the interest of any other partner. Additional capital contributions resulting in a change in the percentage of interest of any partner, or loans or advances to the partnership on which interest is to be computed and charged, for the purpose of computing net profits hereunder as an expense of the business, may only be made with the approval of the General Partner or Partners owning the majority in interest of the capital of the partnership; provided, however, that in the event any partner shall make additional capital contributions to the partnership the other partners shall have the right to make similar contributions in order to keep the interest of each partner in the partnership in proportions equal to those in existence at the date of the inception of the partnership. The Special Partner may assign its share or interest in the partnership only with the consent of the General Partners evidenced by written consent attached to such assignment and filed in the office of the partnership, and the General Partners shall have full power and discretion to give or withhold such consent.

9. Books of Account and Access Thereto: Proper

## Exhibit No. 4—(Continued)

partnership books of account shall be kept by the partners and entry shall be made therein of all transactions and all such matters and things as usually are entered in books of account kept by persons engaged in the same or similar businesses. Such books of account and all documents, letters, papers, instruments, and records belonging to the partnership shall be kept at the office of the partnership and each partner at all times shall have full and free access to examine and copy the same. The books of the partnership may be audited periodically at such times as the partners shall determine and copies of the auditor's report shall be delivered to each partner; and in such audit the capital accounts and the advance accounts of the partners and of each partner shall be stated as at the end of each quarter-annual period.

10. Annual Account: A general account shall be taken annually of the assets and liabilities of the partnership, of all dealings and transactions of the same during the then preceding year, of all matters and things usually included in accounts of a like nature taken by persons engaged in like businesses, and in taking such account a just valuation shall be made of all items requiring valuation, and such annual account shall state the capital of the partnership and the interest of each partner therein at the end of the period of the accounting, such general account to be sent to each partner, and unless within three (3) months any partner shall ob-

## Exhibit No. 4—(Continued)

ject to the same, the same shall be binding upon the partners, except for manifest errors or fraud.

11. Determination of Partnership: The partnership may be determined by a majority in interest of the General Partners at any time upon giving not less than two (2) months' previous notice in writing to the other partners of the intention of the majority of the General Partners in that behalf; and at the expiration of such notice the partnership shall determine accordingly. The term "majority in interest of the General Partners" shall mean any one or more of the General Partners, the aggregate of whose capital account as shown by the books of the partnership shall be in excess of fifty per cent (50%) of the total capital interest of all of the General Partners of the Partnership. Upon the determination of the partnership from whatever cause the General Partners agree that they will make a true, just and final account of all things relating to said business and in all things duly adjust the same. After the affairs of the partnership are adjusted, its debts paid and discharged, and the expense of liquidation shall have been paid, all the balance then remaining shall be applied first in payment to each partner or his or her representative of the balance due to each partner as shown in the advance account of said partner, then in payment of his or her share of the capital as shown on the books of the partnership as of the close of business of the partnership, and the balance shall be divided in the



## Exhibit No. 4—(Continued)

same manner as hereinbefore provided for the division of profits. In the event that the balance remaining after the payment of said debts and expenses and the balances due to each partner is insufficient to pay in full the capital accounts of all of the partners, then such balance shall be applied first in payment to the Special Partner of its share of the capital as shown on the books of the partnership as at the close of business of the partnership and the balance shall be paid to each General Partner in proportion to his or her capital shown on the books of account of the partnership as of the close of business of the partnership, and, in the event the balance remaining after the payment of said debts and expenses is insufficient to pay in full the balance due to each partner as shown in the advance account of said partner, then the amounts shown as due to the Special Partner shall be paid first, the share of the capital of the Special Partner as shown on the books of the partnership shall be paid next, and the remaining balance, if any, shall be prorated among the General Partners according to the respective amounts shown on the books to be due in the advance account of each of said partners. The partners or their representatives shall execute such instruments for facilitating and effecting the realization and the division of the assets of the partners and for their mutual indemnity and release and otherwise as may be requisite or proper.



## Exhibit No. 4—(Continued)

12. Death of General Partner Edward D. Sultan: If General Partner Edward D. Sultan shall die before the expiration of the partnership, his representative shall have the option (such option to be declared by notice in writing given to the surviving partners or left at the office of the partnership within six (6) calendar months after his death), of succeeding to or carrying on the interest of the deceased partner in said business either as a General Partner, in accordance with law, or as a Special Partner, under the provisions of Chapter 225, Revised Laws of Hawaii 1935, as the same now is or as the same may from time to time be amended; and if such option shall be exercised the said business shall be carried on during the residue of said term as from the death of said Edward D. Sultan as nearly as may be according to the provisions of these presents, but so that the representative of said Edward D. Sultan shall succeed to his share in said business and be substituted for him as a dormant General Partner or as a Special Partner; provided that in the case the representative of said Edward D. Sultan shall elect to become a dormant General Partner or a Special Partner by virtue of such option as aforesaid, all proper instruments for carrying out the provisions of this present clause shall be executed and made between the representative and the surviving partners, and all proper notices, publications, petitions or court proceedings shall be made and executed or taken at the expense of the partnership.

## Exhibit No. 4—(Continued)

13. Option to Purchase Share of Deceased Partner or of General Partner Desiring to Terminate Partnership: In the event of the death of any General Partner other than Edward D. Sultan, or of the giving of notice to terminate the partnership by any General Partner other than Edward D. Sultan, the said Edward D. Sultan shall have the option (to be exercised by notice in writing given to the Executor or Administrator, if any, or if none then left at the office of the partnership, or by notice in writing to the General Partner giving such notice to terminate the partnership and leaving a copy of said notice at the office of said partnership within six (6) calendar months after the death of such General Partner or of the giving of the notice to terminate the partnership, as the case may be), to purchase the interest in the partnership of such deceased General Partner, or of such General Partner giving notice to terminate the partnership, for an amount equivalent to the fair value thereof as determined by an auditor or auditors of the partnership or by the value of the interest as shown on the books of account of the partnership, whichever amount is less. In determining the fair value of such interest, no value shall be attributable to good will. If said Edward D. Sultan shall exercise his option and the purchase is consummated, the same shall be considered as effective on the date when the option was exercised and the estate of such deceased partner shall not be entitled to receive any share of the net profits from and after said date

## Exhibit No. 4—(Continued)

but shall be entitled to receive interest at the current bank rate upon the amount to be paid for the deceased partner's interest from said date. Said Edward D. Sultan shall have the right to make payments therefor at such time or times not later than five (5) years after the date when the said option to purchase the deceased partner's interest was exercised as he may deem advisable.

14. Winding up on Death of General Partner: In case the representative of said Edward D. Sultan shall not exercise his option to succeed to the deceased partner's share in said business as a General or a Special Partner, and in the event of the death of any other General Partner except said Edward D. Sultan, the said Edward D. Sultan shall not purchase the interest of said deceased General Partner, then the partnership shall be wound up at the expiration of six (6) calendar months from the date of such death or such sooner time as the surviving General Partners and the representatives of the deceased General Partner may agree upon and its affairs settled in the manner provided in Paragraph 11 hereof.

15. Bankruptcy, etc.: If any of the General Partners shall at any time during the partnership become incapacitated, bankrupt, insolvent, or enter into any composition or arrangement with or for the benefit of his or her creditors, or commit any breach of any of the stipulations or agreements herein contained, the other General Partners may

## Exhibit No. 4—(Continued)

determine the partnership so far as such last mentioned General Partner is concerned by giving notice in writing, left at the office of the partnership, to the partner becoming incapacitated, bankrupt, insolvent, or entering into such composition or arrangement, or committing such breach, and may publish notice of dissolution of the partnership in regard to such last mentioned General Partner, without prejudice to the remedies of the other General Partners for any antecedent breach of any of the stipulations or agreements aforesaid.

16. Arbitration: If at any time during the continuance of the partnership or after the dissolution or determination thereof any dispute, difference or question shall arise between the partners or their representatives touching the partnership or the accounts or transactions thereof or the dissolution or winding up thereof or the construction, meaning, or effect of these presents or anything herein contained, or the rights or liabilities of the partners or their representatives under these presents or otherwise in relation to the premises, then every such dispute, difference or question shall, at the desire of any partner, be submitted to and determined by three (3) arbitrators, in the manner provided by Chapter 116, Revised Laws of Hawaii 1935, as the same now is or may from time to time be amended, in which case any partner may give to the other partners written notice of a desire to have an arbitration of the matter in dispute and name one of the arbitrators in said written notice, whereupon the other

## Exhibit No. 4—(Continued)

partners within ten (10) days after the receipt of such notice shall name a second arbitrator, and in case of failure to do so the arbitrator already appointed shall name such second arbitrator, and the two arbitrators so appointed (in either manner) shall select and appoint the third arbitrator, and in the event that any two arbitrators so appointed shall fail to appoint a third arbitrator within ten (10) days after the naming of the second arbitrator, any party may have the third arbitrator selected or appointed by the person being the Chief Justice of the Supreme Court of the Territory of Hawaii, holding office at that time, and the three arbitrators so appointed shall thereupon proceed to determine the matter in question, disagreement or difference, and the decision of any two of them (including the disposition of the costs of arbitration) shall be final, conclusive, and binding upon all parties, unless the same shall be vacated, modified, or corrected as by said statute provided. The arbitrators shall have all the powers and duties prescribed by said statute and judgment may be entered upon any such award by the Circuit Court of the First Judicial Circuit as provided in said statute.

17. Amendments: If at any time during the continuance of this partnership the parties hereto shall deem it necessary or expedient to make any alteration in any article, clause, matter or thing herein contained for the more advantageous or satisfactory



## Exhibit No. 4—(Continued)

management of the partnership business, it shall be lawful for them so to do by any writing under their joint hands, endorsed on these articles or entered in any of the partnership books, and all such alterations shall be adhered to and have the same effect from and after the time of the adoption of the same as if the same had originally been embodied in and formed a part of these presents.

18. **Term of Partnership:** The term of the partnership shall be for a period commencing with the date of execution hereof and ending April 30, 1943, and subject to the provisions of Paragraph 11 hereinabove, shall continue from year to year, ending April 30th of each year, thereafter until terminated by any General Partner by the giving of not less than six (6) months' written notice of his or her intention to terminate the partnership, by leaving the same at the office of the partnership.

19. **Definitions:** The term "General Partner" as used herein shall include the heirs, executors, administrators and permitted assigns of the General Partners, and the term "Special Partner" as used herein shall include the said Bishop Trust Company, Limited, and Ernest Walter Sultan, in their capacity as Trustees under Deed of Trust of Edward D. Sultan, dated August 28th, 1941, and not in their individual capacity, and their successors in trust and assigns.

In Witness Whereof the parties hereto have exe-

## Exhibit No. 4—(Continued)

cuted these presents as of the day and year first above written.

[Seal] /s/ EDWARD D. SULTAN,  
 /s/ ERNEST WALTER SULTAN,  
 /s/ MARIE HILDA COHEN,  
 /s/ GABRIEL LEWIS SULTAN,  
 General Partners.

/s/ ERNEST WALTER SULTAN,  
 BISHOP TRUST COMPANY,  
 LIMITED,

/s/ By W. A. WHITE, Its Vice-President

/s/ By E. BENNER, Jr., Its Asst. Vice-Pres.

Trustees under Deed of Trust of Edward D. Sultan.

Dated August 28th, 1941, and not individually,  
 Special Partner.

Territory of Hawaii,  
 City and County of Honolulu—ss.

On this 12th day of September, 1941, before me appeared W. A. White and E. Benner, Jr., to me personally known, who being by me duly sworn, did say that they are Vice President and Assistant Vice President, respectively of Bishop Trust Company, Limited, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28th, 1941, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors

Exhibit No. 4—(Continued)

and said W. A. White and E. Benner, Jr. acknowledged said instrument to be the free act and deed of said corporation, as such Co-Trustee.

[Seal]           /s/ KENNETH DREWLINER,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission Expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 28th day of August, 1941, before me personally appeared Edward D. Sultan and Ernest Walter Sultan, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal]           /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 28th day of August, 1941, before me personally appeared Ernest Walter Sultan, one of the Trustees mentioned in the foregoing instrument, to me known to be the person described in and who executed the foregoing instrument as Trustee and acknowledged that he executed the same as his free act and deed as such Trustee.

[Seal]           /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

## Exhibit No. 4—(Continued)

State of California,  
City and County of San Francisco—ss:

On this 3rd day of September, 1941, before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal]           /s/ MARK E. LEVY,  
Notary Public in and for the City and County of  
San Francisco, State of California. My Com-  
mission expires September 28th, 1943.

State of California,  
City and County of San Francisco—ss.

On this 3rd day of September, 1941, before me personally appeared Gabriel Lewis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]           /s/ MARK E. LEVY,  
Notary Public in and for the City and County of  
San Francisco, State of California. My Com-  
mission expires September 28th, 1943.

## EXHIBIT No. 5

This indenture, made as of the close of business on August 30, 1941, by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, hereinafter called the "Seller" and Edward D. Sultan Co., a Special Partnership composed of Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, as General Partners, and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor, as Special Partner, having its principal place of business in Honolulu aforesaid, hereinafter called the "Partnership,"

Witnesseth That:

The Seller, for and in consideration of the transfer to him of those certain promissory notes payable on demand and made by him on August 28, 1941, to the order of Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor, in the amount of Forty-Two Thousand and No/100ths Dollars (\$42,000.00) to the order of Ernest Walter Sultan, in the amount of Four Thousand and No/100ths Dollars (\$4,000.00), to the order of Marie Hilda Cohen in the amount of Four Thousand and No/100ths Dollars (\$4,000.00), and to the order of Gabriel Lewis Sultan in the amount of Four Thousand and No/100ths Dollars (\$4,000.00),



## Exhibit No. 5—(Continued)

and the transfer to him of a Forty-Six Per Cent (46%) interest in the capital of the partnership, does hereby grant, bargain, sell, assign, transfer, set over, confirm and deliver unto the Partnership, its successors and assigns, forever, all and singular, the rights, property, assets, privileges and business formerly carried on by him, of the value of One Hundred Thousand Dollars (\$100,000.00) as shown on the balance sheet prepared by Tennent & Greaney, dated as of the close of business August 30, 1941, including particularly but without in any wise limiting the generality of the foregoing, all chattels, leaseholds, machines and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, books, accounts, inventories, together with all other personal property, goods and chattels, of every kind and description, wheresoever situate, all good will, trade names, trade connections, licenses and all contracts and agreements including any and all rights under policies of indemnity, fidelity or other bonds or insurance of any and every kind, all cash on hand or in bank or banks, bonds, mortgages, conditional sales agreements, accounts and bills receivable, promissory notes, claims, demands, equities and choses in action and all other property and assets, tangible or intangible, of every kind or nature, owned or claimed by the Seller and used by him in the business now carried on and shown on said balance sheet; save and except the consideration received by

## Exhibit No. 5—(Continued)

him from the Partnership as the purchase price for the foregoing,

To have and to hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits and appurtenances to the same or any part thereof belonging or appertaining or held and enjoyed therewith, unto the Partnership, its successors and assigns, absolutely and forever, or in fee simple, as the case may be;

And for the consideration aforesaid the Seller does hereby irrevocably appoint the Partnership, its successors and assigns, his true and lawful attorney, in his name, place and stead to ask, demand, sue for and recover any and all moneys, assets or other property conveyed and transferred hereby or intended so to be, and the rights and benefits thereof; and does further covenant that he, the Seller, will at any time at the request of the Partnership make, execute, and deliver all such receipts, powers of attorney, and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property, claims or demands hereinabove conveyed and assigned or intended so to be as the Partnership reasonably may require.

In Witness Whereof the Seller has executed these presents as of the close of business August 30, 1941.

/s/ EDWARD D. SULTAN.

## Exhibit No. 5—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 13th day of September, 1941, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]            /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

## EXHIBIT No. 6

In the Office of the Treasurer of the Territory  
of Hawaii

In the Matter of the Special Partnership of ED-  
WARD D. SULTAN CO.

## CERTIFICATE OF SPECIAL PARTNERSHIP

The undersigned, being desirous of forming a special partnership hereby certify in accordance with the provisions of Chapter 225, Revised Laws of Hawaii 1935, as follows:

1. The name under which the partnership is to be conducted is "Edward D. Sultan Co.";

2. The general nature of the business intended to be transacted is to buy, sell, import, export, trade and deal in jewelry, watches, gems, precious and semi-precious stones and goods, wares and merchandise of every kind and nature, and to carry on the

Exhibit No. 6—(Continued)

business of general wholesale and retail merchants, importers, exporters, commission merchants, brokers, factors, agents or manufacturers and such other business as may be necessary, suitable or proper to the accomplishment of the purposes or connected with or related thereto as the partners from time to time mutually may agree; and the place or places where the business is to be transacted is 1025 Alakea Street, Honolulu, City and County of Honolulu, Territory of Hawaii, and/or at such other place or places in the Territory of Hawaii as the partners from time to time shall determine;

3. The names of the partners and the residence of each are as follows:

Edward D. Sultan, General Partner, Honolulu, T.H.

Ernest Walter Sultan, General Partner, Honolulu, T.H.

Marie Hilda Cohen, General Partner, San Francisco, California.

Gabriel Lewis Sultan, General Partner San Francisco, California.

Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, Special Partner, Honolulu, T.H.

4. The amount of capital which the Special Partner has contributed to the special partnership assets is \$42,000.00;

5. The term for which the partnership is to exist commenced on August 30, 1941, and will continue until April 30, 1943, and thereafter from year to

## Exhibit No. 6—(Continued)

year until terminated as provided in that certain Special Partnership Agreement dated August 30, 1941.

In Witness Whereof the undersigned have caused this certificate to be executed this 13th day of September, 1941.

/s/ EDWARD D. SULTAN,  
 /s/ ERNEST WALTER SULTAN,  
 /s/ MARIE HILDA COHEN,  
 /s/ GABRIEL LEWIS SULTAN,  
 /s/ ERNEST WALTER SULTAN, and  
 BISHOP TRUST COMPANY,  
 LIMITED,

Trustees as aforesaid,

[Seal] /s/ W. A. WHITE,  
 Its Vice-President.

/s/ D. W. ANDERSON,  
 Its Asst. Vice-Pres.

Territory of Hawaii,  
 City and County of Honolulu—ss:

On this 30th day of September, 1941, before me appeared W. A. White and D. W. Anderson, to me personally known, who, being by me duly sworn, did say that they are Vice President and Assistant Vice President respectively of Bishop Trust Company, Limited, a Hawaiian corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and D. W. Anderson



Exhibit No. 6—(Continued)

acknowledged said instrument to be the free act and deed of said corporation.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission Expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 13th day of September, 1941, before me personally appeared Edward D. Sultan and Ernest Walter Sultan, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 13th day of September, 1941, before me personally appeared Ernest Walter Sultan, one of the Trustees mentioned in the foregoing instrument, to me known to be the person described in and who executed the foregoing instrument as Trustee and acknowledged that he executed the same as his free act and deed as such Trustee.

[Seal]        /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My commission expires June 30, 1945.

## Exhibit No. 6—(Continued)

State of California,

City and County of San Francisco—ss:

On this 24th day of September, 1941, before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal]        /s/ MARK E. LEVY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires September 28th, 1943.

State of California,

City and County of San Francisco—ss:

On this 24th day of September, 1941, before me personally appeared Gabriel Lewis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal]        /s/ MARK E. LEVY,

Notary Public in and for the City and County of San Francisco, State of California. My commission expires September 28th, 1943.

State of California,

City and County of San Francisco—ss:

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law

## Exhibit No. 6—(Continued)

a seal), being the officer authorized by the laws of said State of California to make the following certificate, do hereby certify: That Mark E. Levy whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or conveyances for lands, tenements or hereditaments in said State, to be recorded therein.

I further certify that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said Jurat, Affidavit, Acknowledgment or Certificate is genuine, and that the said instrument is executed or acknowledged according to the laws of said State of California. Further that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office pursuant to law, and that I believe the impression of the seal upon the original certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Superior Court.

Dated: Sept. 25, 1941.

[Seal]            /s/ H. A. VAN DER ZEE, Clerk.

## Exhibit No. 6—(Continued)

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII 1935.

Territory of Hawaii,  
City and County of Honolulu—ss:

Edward D. Sultan and Ernest Walter Sultan, being first duly sworn, on oath each for himself doth depose and say:

That they are residents of Honolulu, City and County of Honolulu, Territory of Hawaii; that Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, is a Special Partner in the partnership of Edward D. Sultan Co.; that as Special Partner said Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees as aforesaid, actually have paid into the partnership as a capital contribution the sum of \$42,000.00 in lawful money;

And further affiants sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ EDWARD D. SULTAN,

/s/ ERNEST WALTER SULTAN,

Exhibit No. 6—(Continued)

Subscribed and sworn to before me this 13th day of September, 1941.

[Seal]           /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My commission expires June 30, 1945.

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII 1935.

State of California

City and County of San Francisco—ss:

Marie Hilda Cohen and Gabriel Lewis Sultan, being first duly sworn, on oath each for herself and himself doth depose and say:

That they each are residents of San Francisco, California; that they each are a General Partner in the partnership of Edward D. Sultan Co.; that Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, is a Special Partner in the partnership of Edward D. Sultan Co.; that as Special Partner said Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees afore-said, actually have paid into the partnership as a capital contribution the sum of \$42,000 in lawful money;

And further affiants sayeth not except that this Affidavit is made in accordance with the require-



## Exhibit No. 6—(Continued)

ments of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ MARIE HILDA COHEN,  
/s/ GABRIEL LEWIS SULTAN.

Subscribed and sworn to before me this 24th day of Spetmber, 1941.

[Seal] /s/ MARK E. LEVY,

Notary Public in and for the City and County of San Francisco, State of California. My Commission expires September 28th, 1943.

State of California,  
City and County of San Francisco—ss:

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law a seal), being the officer authorized by the laws of said State of California to make the following certificate, do hereby certify: That Mark E. Levy whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or Conveyances for lands, tene-



## Exhibit No. 6—(Continued)

pany, Limited, a Hawaiian corporation, and as such is authorized to make this Affidavit on its behalf;

That said Bishop Trust Company, Limited, is one of the Trustees under the Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor; that said Bishop Trust Company, Limited, a Hawaiian corporation, and Ernest Walter Sultan, as Trustees under Deed of Trust and not in their individual capacity, is a Special Partner in the partnership of Edward D. Sultan Co.; that as Special Partner said Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees as aforesaid, actually have paid into the partnership as a capital contribution the sum of \$42,000.00 in lawful money;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ W. A. WHITE

Subscribed and sworn to before me this 30th day of September, 1941.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

Exhibit No. 6—(Continued)

AFFIDAVIT OF SPECIAL PARTNERSHIP  
REQUIRED BY SECTION 6875, REVISED  
LAWS OF HAWAII 1935.

Territory of Hawaii,  
City and County of Honolulu—ss:

Ernest Walter Sultan, being first duly sworn, on oath doth depose and say:

That he is one of the Trustees under the Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor; that he and Bishop Trust Company, Limited, a Hawaiian corporation, as Trustees under Deed of Trust and not in their individual capacity, are a Special Partner in the partnership of Edward D. Sultan Co.; that as Special Partner they actually have paid into the partnership as a capital contribution the sum of \$42,000.00;

And further affiant sayeth not except that this Affidavit is made in accordance with the requirements of the provisions of Section 6875, Revised Laws of Hawaii 1935.

/s/ ERNEST WALTER SULTAN

Subscribed and sworn to before me this 13th day of September, 1941.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

## EXHIBIT No. 7

AMENDMENT TO SPECIAL PARTNERSHIP  
AGREEMENT

This indenture made this 12th day of January, 1942, by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, Ernest Walter Sultan, of Honolulu aforesaid, Marie Hilda Cohen, of San Francisco, California, and Gabriel Lewis Sultan, of San Francisco aforesaid (hereinafter referred to as "General Partners"), and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor (hereinafter referred to as the "Special Partner"),

Witnesseth That:

Whereas the parties hereto have formed with each other a special partnership by Special Partnership Agreement dated the 30th day of August, 1941; and

Whereas the parties hereto deem it necessary and expedient to alter certain provisions in accordance with the provisions of paragraph 17 (page 14) in said Special Partnership Agreement contained,

Now, therefor, this indenture further witnesseth:

That paragraph 12 (pages 10 and 11) of said Special Partnership Agreement is altered by adding at the end thereof the following:

"In the event that the aforesaid option is exercised, then Ernest Walter Sultan, if he desires so to act, shall become or continue to act



## Exhibit No. 7—(Continued)

as Manager of the business of the partnership, and shall receive as compensation for his services as such a salary, chargeable for purposes of computing net income hereunder as an expense of the business, in such amount as the General Partners from time to time shall agree upon, constituting the reasonable value of the services rendered to the partnership, but in no event shall his said salary be fixed at less than Three Hundred Fifty Dollars (\$350.00) per month. The salary herein provided shall not in any way affect the right of Ernest Walter Sultan so long as he continues to be active in the business of the partnership to receive twenty-five per cent (25%) of the net profits of the partnership as provided in paragraph 4 (pages 4 and 5) of the said Special Partnership Agreement.”

and paragraph 18 (page 14) of said Special Partnership Agreement is hereby altered by adding at the end thereof the following:

“Provided, however, that from and after the death of Edward D. Sultan the Special Partnership Agreement shall continue in full force and effect until the end of the fiscal year of the business of the partnership ending in 1953, and that paragraph 12 of said Special Partnership Agreement as herein altered shall not be alterable prior to such date without the consent of all the parties thereto.”

In witness whereof the parties hereto have exe-

Exhibit No. 7—(Continued)

cuted these presents as of the day and year first above written.

/s/ EDWARD D. SULTAN,  
/s/ ERNEST WALTER SULTAN,  
General Partners.

/s/ ERNEST WALTER SULTAN,  
BISHOP TRUST COMPANY,  
LIMITED,

Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, and not individually, Special Partner.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 12th day of January, 1942, before me personally appeared Edward D. Sultan and Ernest Walter Sultan, to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 12th day of January, 1942, before me personally appeared Ernest Walter Sultan, one of the Trustees mentioned in the foregoing instru-

Exhibit No. 7—(Continued)

ment, to me known to be the person described in and who executed the foregoing instrument as Trustee and acknowledged that he executed the same as his free act and deed as such trustee.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

State of California,  
City and County of San Francisco—ss:

On this . . . . day of . . . . ., 194., before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

.....

Notary Public in and for the City and County of San Francisco, State of California.

State of California,  
City and County of San Francisco—ss:

On this . . . . day of . . . . ., 194., before me personally appeared Gabriel Lewis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

.....

Notary Public in and for the City and County of San Francisco, State of California.

## EXHIBIT No. 8

AMENDMENT TO SPECIAL PARTNERSHIP  
AGREEMENT

This indenture made as of this 9th day of June, 1942, by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, Ernest Walter Sultan, of Honolulu aforesaid, Marie Hilda Cohen, of San Francisco, California, and Gabriel Lewis Sultan, of San Francisco aforesaid (hereinafter referred to as "General Partners"), and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor (hereinafter referred to as the "Special Partner"),

Witnesseth that:

Whereas, the parties hereto have formed with each other a special partnership by Special Partnership Agreement dated the 30th day of August, 1941, which said Agreement was amended by Indenture dated the 12th day of January, 1942; and

Whereas, the parties hereto deem it necessary and expedient to alter certain provisions in accordance with the provisions of paragraph 17 (page 14) in said Special Partnership Agreement contained,

Now, therefore, this indenture further witnesseth:

That paragraph 4 (page 4 and 5) of said Special

## Exhibit No. 8—(Continued)

Partnership Agreement is hereby amended to read as follows:

“4. Compensation of General Partners and Division of Profits: From time to time and as the General Partners may agree, the General Partners actively engaged in the business of the partnership shall receive as compensation for services rendered to the partnership a salary chargeable, for purposes of computing net profits hereunder, as an expense of the business, in such amount as the General Partners from time to time shall agree upon, constituting the reasonable value of the services rendered to the partnership. All of the remaining net profits of the partnership shall be divided for each annual period in proportion to the above stated interest of each of the partners in the original capital of the partnership, and all losses of the partnership for each annual period shall be divided among the partners in the same manner as herein provided for the division of profits. Any partner may withdraw from the partnership such portion of the profits attributable to the partner's interest as the General Partners may from time to time deem advisable. Amounts not withdrawn shall not be added to the capital account but shall be credited to advance accounts in the names of the respective partners for whom said amounts are being held and interest at the



## Exhibit No. 8—(Continued)

rate of five per cent (5%) per annum computed on quarterly balances beginning as of May 1, 1942, and chargeable for the purposes of computing net profits hereunder as an expense of the business, shall be credited to said accounts.”

and paragraph 5 (page 5) of said Special Partnership Agreement is hereby amended to read as follows:

“5. Services of the Partners: General Partners, Edward D. Sultan and Ernest Walter Sultan, shall diligently give as much of their time, attention and services to the business of the partnership as they may deem advisable and shall be faithful to the partnership in all transaction relating to said business. Neither of said General Partners shall, without the written consent of all of the partners, employ the capital or credit of the partnership in any other business than that of the partnership, and no partner shall, without the written consent of all of the partners, during the continuation of the partnership carry on or be concerned or interested directly or indirectly in any other business in the Territory of Hawaii which is in direct competition to the business of the partnership.”

In witness whereof the parties hereto have ex-

Exhibit No. 8—(Continued)

ecuted these presents as of the day and year first above written.

.....  
General Partners.  
BISHOP TRUST COMPANY,  
LIMITED,

By.....  
Its Vice President.

By.....  
Its

Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, and not individually, Special Partner.

.....  
.....—ss:

On this.....day of....., 1943, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

.....  
.....—ss:

On this.....day of....., 1943, before me personally appeared Ernest Walter Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowl-

Exhibit No. 8—(Continued)

edged that he executed the same as his free act and deed.

.....

State of California

City and County of San Francisco—ss:

On this.....day of....., 1943, before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

.....

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco—ss:

On this..... day of....., 1943, before me personally appeared Gabriel Lewis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

.....

Notary Public in and for the City and County of San Francisco, State of California.

.....

.....—ss:

On this.....day of....., 1943, before me personally appeared Ernest Walter Sultan, Co-

Exhibit No. 8—(Continued)

Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Co-Trustee.

.....

Territory of Hawaii,  
City and County of Honolulu—ss:

On this.....day of....., 1943, before me appeared..... and....., to me personally known, who, being by me duly sworn, did say that they are the Vice President and....., respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said ..... and .....acknowledged said instrument to be the free act and deed of said corporation as such Co-Trustee.

.....

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

## EXHIBIT No. 9

AMENDMENT TO SPECIAL PARTNERSHIP  
AGREEMENT

This indenture made as of this 2nd day of February, 1945, by and between Edward D. Sultan, of Honolulu, City and County of Honolulu, Territory of Hawaii, Ernest Walter Sultan, of Honolulu aforesaid, Marie Hilda Cohen, of San Francisco, California, and Gabriel Lewis Sultan, of San Francisco aforesaid (hereinafter referred to as "General Partners"), and Ernest Walter Sultan and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, as Settlor (hereinafter referred to as the "Special Partner"),

Witnesseth that:

Whereas, the parties hereto have formed with each other a special partnership by Special Partnership Agreement dated August 30, 1941, which said Agreement was amended by Indentures dated January 12, 1942, and June 9, 1942; and

Whereas, the parties hereto deem it necessary and expedient to alter certain provisions in accordance with the provisions of paragraph 17 (page 14) in said Special Partnership Agreement contained,

Now, therefore, this indenture further witnesseth that:



Exhibit No. 9—(Continued)

Paragraphs 12, 13 and 14 (pages 10, 11 and 12) and Paragraph 18 (page 14) of said Special Partnership Agreement are hereby amended to read as follows:

“12. Termination of Partnership Upon Death of Partner. The death of any general partner shall dissolve the partnership at the end of the current partnership year in which such death shall occur. An audited statement shall be prepared as of that date by the regularly employed independent certified public accountants of the partnership, who shall certify that their examination of the books of accounts and records of the partnership has been made in such detail and in accordance with generally accepted auditing standards applicable in the circumstances, including such tests of accounting records and other supporting evidence and such other procedure as was considered necessary in order to certify that the balance sheet and related statements of income of the partnership fairly presented its position at the end of the period and the results of operation in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year.

“It shall also be the duty of the independent auditor to certify as to whether or not the outstanding commitments, i.e. obligations of the partnership to buy or sell merchandise for delivery in the future, are likely to disclose a loss, and, if so, the approximate amounts thereof. A reserve shall be provided to take care of such loss, and any losses

## Exhibit No. 9—(Continued)

sustained either in obtaining cancellation of said commitments or in their performance shall be charged against said reserve. The determination of the surviving general partners as to whether or not a loss has resulted shall be binding and conclusive upon all the parties and shall be accepted by the personal representatives of the deceased general partner without question or dispute.

“The operations of the partnership may, however, be continued pending the preparation of said audited statement and until thirty days after the receipt by the surviving partners and the estate of the deceased partner of the audited statement herein provided for.

“13. Options on Termination: If general partner, Edward D. Sultan, shall die before the expiration of the partnership, his representative shall have the option (to be declared by notice in writing given to the surviving partners or left at the office of the partnership within said thirty day period (after receipt of the audited statement provided for in paragraph 12), or within a period of six months from the date of death of Edward D. Sultan, whichever is the longer period) of succeeding to or carrying on the interest of the deceased partner in said business as at the end of the partnership year in which such death shall occur, either as a general partner, in accordance with law, as a special partner, or as a limited partner under the provisions of Act 162, Session Laws of Hawaii 1943, as the same now are or as the same may from time

## Exhibit No. 9—(Continued)

to time be amended; and notwithstanding any of the provisions of the preceding paragraph of this agreement to the contrary, the operations of the partnership shall be continued during the period in which the option may be exercised. If such option shall be exercised, the surviving partners agree that they will enter into a partnership agreement with the representative of said deceased partner so that the said business shall be carried on during the residue of said term as from the end of the partnership year in which the death of said Edward D. Sultan shall occur as nearly as may be according to the provisions of these presents, but so that the representative of said Edward D. Sultan shall succeed to his share in said business and be substituted for him as a dormant general partner, as a special partner or as a limited partner; provided that in the case the representative of said Edward D. Sultan shall elect to become a dormant general partner, a special partner or a limited partner by virtue of such option as aforesaid, all proper instruments for carrying out the provisions of this present clause shall be executed and made between the representative and the surviving partners, and all proper notices, publications, petitions or court proceedings shall be made and executed or taken at the expense of the partnership.

“In the event of the death of any general partner, other than Edward D. Sultan, an option during the said period of thirty days (after the receipt of the audited statement provided for in paragraph

## Exhibit No. 9—(Continued)

12), is hereby granted to said Edward D. Sultan to purchase the interest in the partnership of such deceased general partner (said option to be exercised by notice in writing given to the executor or administrator, if any, or, if none, then left at the office of the partnership) for an amount equivalent to the fair value thereof as determined by the auditor's statement, or by the value of the interest as shown on the books of account of the partnership, whichever amount is less. In determining the fair value of such interest, no value shall be attributable to good will. Edward D. Sultan shall have a like option to purchase the interest of any general partner who may give notice to terminate the partnership by giving notice in writing to such partner and leaving a copy of the notice at the office of the partnership within three (3) months of the notice to terminate.

“If Edward D. Sultan shall exercise his option and the purchase is consummated, the same shall be considered as effective at the end of the partnership year in which such death occurred or the notice of intention to terminate the partnership was given, and the partner desiring to terminate the partnership or the estate of such deceased partner, as the case may be, shall not be entitled to receive any share of the net profits from and after said date, but shall be entitled to receive interest at the current bank rate upon the amount to be paid for the deceased partner's interest from said date. Said Edward D. Sultan shall have the right



## Exhibit No. 9—(Continued)

to make payments therefor at such time or times not later than five (5) years after the date when the said option to purchase the deceased partner's interest was exercised as he may deem advisable.

“14. Winding up on Death of General Partner: In case the representative of said Edward D. Sultan shall not exercise his option to succeed to the deceased partner's share in said business as a general, special or limited partner, and in the event of the death of any other general partner except said Edward D. Sultan, the said Edward D. Sultan shall not purchase the interest of said deceased general partner, said partnership shall be placed in liquidation. Thereupon the debts of the partnership shall be first paid as satisfactorily provided for before any distribution shall be made to the general partners or the estate of the deceased partner.

“18. Term of Partnership: The term of the partnership shall be for a period commencing with the date of execution hereof and ending January 31, 1946, and, subject to the provisions of paragraph 11 hereinabove, shall continue from year to year ending January 31st of each year thereafter until terminated at the end of the partnership year in which any general partner shall give written notice of his or her intention to terminate the partnership by leaving the same at the office of the partnership not less than three (3) months prior to the end of said partnership year.”

In witness whereof the parties hereto have ex-



## Exhibit No. 9—(Continued)

executed these presents as of the day and year first above written.

/s/ EDWARD D. SULTAN,  
 /s/ ERNEST WALTER SULTAN,  
 /s/ MARIE HILDA COHEN,  
 /s/ GABRIEL LEWIS SULTAN,  
 General Partners.

[Seal] /s/ ERNEST WALTER SULTAN,  
 BISHOP TRUST COMPANY,  
 LIMITED,

By /s/ W. A. WHITE,  
 Its Vice-President.

By /s/ E. BENNER, JR.,  
 Its Vice-President.

Trustees under Deed of Trust of Edward D. Sultan dated August 28, 1941, and not individually, Special Partner.

Territory of Hawaii,  
 City and County of Honolulu—ss:

On this 2nd day of February, 1945, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
 Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires June 30, 1945.

Exhibit No. 9—(Continued)

State of New York,  
County of New York—ss:

On this 26th day of February, 1945, before me personally appeared Ernest Walter Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ MORTIMER LANDSBERG,  
Mortimer Landsberg, Notary Public Queens Co.  
Clk. No. 3445, Reg. No. 205-L-5 N. Y. Co. Clk.  
No. 845, Reg. No. 497-L-5.

State of California,  
City and County of San Francisco—ss:

On this 10th day of February, 1945, before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ THOMAS J. O'CONNOR,  
Notary Public in and for the City and County of  
San Francisco, State of California.

State of California,  
City and County of San Francisco—ss:

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law

## Exhibit No. 9—(Continued)

a seal), being the officer authorized by the laws of said State of California to make the following certificate, do hereby certify: That Thomas J. O'Connor, whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or Conveyances for lands, tenements or hereditaments in said State, to be recorded therein.

I further certify that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said Jurat, Affidavit, Acknowledgment or Certificate is genuine, and that the said instrument is executed or acknowledged according to the laws of said State of California. Further that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office pursuant to law, and that I believe the impression of the seal upon the original certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Superior Court.

Dated: Feb. 10, 1945.

[Seal] /s/ H. A. VAN DER ZEE, Clerk.

Exhibit No. 9—(Continued)

State of California,

City and County of San Francisco—ss:

On this 9th day of February, 1945, before me personally appeared Gabriel Lewis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ THOMAS J. O'CONNOR,

Notary Public in and for the City and County of San Francisco, State of California.

State of California,

City and County of San Francisco—ss:

I, H. A. van der Zee, County Clerk of the City and County of San Francisco, State of California, and ex-officio Clerk of the Superior Court thereof (the same being a Court of Record, having by law a seal), being the officer authorized by the laws of said State of California to make the following certificate, do hereby certify: That Thomas J. O'Connor, whose name is subscribed to the Jurat, Affidavit, or Certificate of the Proof or Acknowledgment of the annexed instrument, was, at the time of taking the same, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned, qualified and sworn and duly authorized by the laws of said State of California to take Jurats, Affidavits, and the Acknowledgments and Proofs of Deeds or Conveyances for lands, tene-

## Exhibit No. 9—(Continued)

ments or hereditaments in said State, to be recorded therein.

I further certify that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said Jurat, Affidavit, Acknowledgment or Certificate is genuine, and that the said instrument is executed or acknowledged according to the laws of said State of California. Further that I have compared the impression of the seal affixed thereto with a specimen impression thereof deposited in my office pursuant to law, and that I believe the impression of the seal upon the original certificate is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Superior Court.

Dated: Feb. 9, 1945.

[Seal] /s/ H. A. VAN DER ZEE, Clerk.

State of New York,  
County of New York—ss:

On this 26th day of February, 1945, before me personally appeared Ernest Walter Sultan, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, to me known to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed as such Co-Trustee.

[Seal] /s/ MORTIMER LANDSBERG,  
Notary Public Queens Co. My Commission expires  
March 30, 1945.



## Exhibit No. 9—(Continued)

State of New York,  
County of New York—ss:

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record having by law a seal, do hereby certify, that Mortimer Landsberg whose name is subscribed to the annexed deposition, certificate of acknowledgment or proof, was at the time of taking the same a Notary Public acting in and for said County, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's office of the County of New York a certified copy of his appointment and qualification as a Notary Public for the County of Queens with his autograph signature; that as such Notary Public he was duly authorized by the laws of the State of New York to protect notes, to take and certify depositions, to administer oaths and affirmations, to take affidavits and certify the acknowledgment or proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this State. And further, that I am well acquainted with the handwriting of such Notary Public, or have compared the signature of such officer with his autograph signature filed in my office, and believe that the signature to the said annexed instrument is genuine.

In witness whereof, I have hereunto set my hand

## Exhibit No. 9—(Continued)

and affixed my official seal this 27th day of February, 1945.

[Seal] /s/ ARCHIBALD R. WATSON,  
County Clerk and Clerk of the Supreme Court, New  
York County.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 16th day of April, 1945, before me appeared W. A. White and E. Benner, Jr., to me personally known, who, being by me duly sworn, did say that they are the Vice-President and Vice-President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said W. A. White and E. Benner, Jr. acknowledged said instrument to be the free act and deed of said corporation as such Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires June 30, 1945.

## EXHIBIT No. 10

This indenture made this . . . . . day of . . . . . A.D. 1949, by and among Edward D. Sultan, of the City and County of Honolulu, Territory of Hawaii, Ernest Walter Sultan, formerly of Honolulu and presently residing in Los Angeles, California, Marie Hilda Cohen, of San Francisco, California, and Gabriel Lewis Sultan, of San Francisco, California, (hereinafter referred to as "General Partners", and Ernest Walter Sultan and Bishop Trust Company, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan, Settlor, (hereinafter referred to as "Special Partners"),

Witnesseth that:

Edward D. Sultan, Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan are presently General Partners, and Ernest Walter Sultan and Bishop Trust Company, Trustees as aforesaid, are presently Special Partners under a Special Partnership Agreement dated August 30, 1941, as amended by Agreements dated January 12, 1942, June 9, 1942, and February 2, 1945.

The parties hereto deem it necessary and expedient to further amend said agreement and to alter certain provisions thereof as provided for in paragraph 17 of the main agreement (page 14).

Now, therefore, this Indenture witnesseth that:

At the close of business on January 31, 1949, Ernest Walter Sultan (formerly of Honolulu and

## Exhibit No. 10—(Continued)

presently residing in Los Angeles, California), Marie Hilda Cohen (of San Francisco, California) and Gabriel Lewis Sultan (of San Francisco, California), withdraw as General Partners in said partnership, and shall from and after January 31, 1949, cease to have any interest in the said partnership or the profits or losses thereof, and they shall have returned to them their capital contributions together with any accrued and unwithdrawn profits to January 31, 1949, within ten (10) days after the determination of such profits by the regularly employed independent public accountants of the partnership.

The withdrawing partners further agree to execute any and all instruments, receipts, acquittances and releases that may be required to effect their withdrawal from said partnership, and each of said General Partners does hereby nominate, constitute and appoint Edward D. Sultan, of the City and County of Honolulu, Territory of Hawaii, as their respective true and lawful attorney-in-fact for each of them, and in each of their names and as such attorney-in-fact to execute and deliver any and all instruments required in law to effect their withdrawal from said partnership, and to terminate their interests therein, with full power and authority to receipt for all sums of money due to them, and to give acquittances and releases therefor, as fully and effectually as each one of them could do personally, hereby ratifying, approving and confirming any action taken by their said attorney-

Exhibit No. 10—(Continued)

in-fact or by any person whom he may lawfully substitute to act as attorney-in-fact.

This agreement shall extend to and bind all of the parties hereto, their respective heirs, executors, administrators, successors and assigns.

In witness whereof, the parties hereto have executed these presents as of the day and year first above written.

Signed, Sealed and Delivered in the presence of:

[Seal] .....  
Edward D. Sultan

[Seal] /s/ ERNEST WALTER SULTAN,

[Seal] /s/ MARIE HILDA COHEN,

[Seal] /s/ GABRIEL LEWIS SULTAN,  
General Partners.

[Seal] /s/ ERNEST WALTER SULTAN,  
BISHOP TRUST COMPANY,

By.....

Trustees under Deed of Trust dated August 28, 1941, of Edward D. Sultan, Settlor, Special Partners.

State of California,  
County of Los Angeles—ss:

On this 28th day of January, A.D. 1949, before me, Harriett R. Barker, a Notary Public in and for said County and State, personally appeared Ernest Walter Sultan, known to me to be the person whose name is subscribed to the within instru-



## Exhibit No. 10—(Continued)

ment, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] /s/ HARRIETT R. BARKER,  
Notary Public in and for said County and State.

My Commission expires January 26, 1950.

(Acknowledgment—General—Wolcotts Form 233)

State of California, (Foreign)  
County of Los Angeles—ss:

I, W. G. Sharp, County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, which Court is a Court of Record, having by law a seal do hereby certify that Harriett R. Barker whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public in and for Los Angeles County, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer

Exhibit No. 10—(Continued)

is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 29th day of January, 1949.

[Seal] /s/ W. G. SHARP,  
County Clerk and Clerk of the Superior Court of  
the State of California, in and for the County  
of Los Angeles.

State of California,  
City and County of San Francisco—ss:

On this 26th day of January, A.D. 1949, before me, Alice E. Lowrie, a Notary Public in and for the City and County of San Francisco, State of California, residing therein, duly commissioned and sworn, personally appeared Marie Hilda Cohen and Gabriel Lewis Sultan, known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof, I have hereunto set my hand

## Exhibit No. 10—(Continued)

and affixed my official seal the day and year in this Certificate first above written.

[Seal] /s/ ALICE E. LOWRIE,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

State of California,  
City and County of San Francisco—ss:

I, Martin Mongan, County Clerk and Clerk of the Superior Court of the State of California, in and for the City and County of San Francisco, which Court is a Court of Record, having by law a seal, do hereby certify: That Alice E. Lowrie, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public in and for the City and County of San Francisco, duly commissioned and sworn and residing in said City and County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwrit-

Exhibit No. 10—(Continued)

ing and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In witness whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the City and County of San Francisco.

Dated: January 27, 1949.

[Seal] /s/ MARTIN MONGAN, Clerk.

State of California,  
City and County of San Francisco—ss:

Marie Hilda Cohen and Gabriel Lewis Sultan, being first duly sworn, each for herself and himself, deposes and says:

That he has executed the foregoing amendment to agreement for limited partnership; that he has read the foregoing agreement and knows the contents thereof and that the same is true of his own knowledge.

/s/ MARIE HILDA COHEN

/s/ GABRIEL LEWIS SULTAN

Subscribed and sworn to before me, this 26th day of January, 1949.

[Seal] /s/ ALICE E. LOWRIE,

Notary Public, in and for the City and County of San Francisco, State of California.

## Exhibit No. 10—(Continued)

State of California,  
County of Los Angeles—ss:

Ernest Walter Sultan, being first duly sworn, deposes and says:

That he has executed the foregoing amendment to agreement for limited partnership; that he has read the foregoing agreement and knows the contents thereof, and that the same is true of his own knowledge.

/s/ ERNEST WALTER SULTAN

Subscribed and sworn to before me this 28th day of January, 1949.

[Seal] /s/ HARRIETT R. BARKER,

Notary Public, in and for the County of Los Angeles, State of California.

State of California,  
County of Los Angeles—ss:

Ernest Walter Sultan, being first duly sworn, deposes and says:

That he has executed the foregoing amendment to agreement for limited partnership as one of the trustees under deed of trust dated August 28, 1941, of Edward D. Sultan, Settlor; that he has read the foregoing agreement and knows the contents thereof, and that the same is true of his own knowledge.

/s/ ERNEST WALTER SULTAN



Exhibit No. 10—(Continued)

Subscribed and sworn to before me this 28th day of January, 1949.

[Seal] /s/ HARRIETT R. BARKER,  
Notary Public, in and for the County of Los Angeles, State of California.

EXHIBIT NO. 11

[Letterhead of Edward D. Sultan Co.]

Ernest Walter Sultan and Feb. 1, 1949  
Bishop Trust Company, Limited, Trustees  
C/o Bishop Trust Company, Limited,  
Honolulu, T. H.

Gentlemen:

Now that my son, Edward Dexter Sultan, Jr., has reached his majority, and having worked for the company during the last several summers, and being about to graduate from college so that he will be able to devote his full time to the business, he as well as I am desirous of arranging to have him acquire an interest in the Edward D. Sultan Co.

As you know, the main reason for setting up the Trust was to try to interest him in the business so that he could, in due course, take it over.

At the present time, due to changes in business conditions that necessitate larger investments in stock and, also because of the slowing down of the receipt of payments on accounts receivable, I believe that the capital of the company will have to be increased to not less than \$250,000.00.

## Exhibit No. 11—(Continued)

In order to get new money into the business, through sale of an interest therein to my wife, as well as to serve the purpose of getting my son into the business, I would like to purchase your interest in Edward D. Sultan Co. on behalf of my son and wife. I have arranged to purchase, from Ernest Walter Sultan, Marie Hilda Cohen and Gabriel Lewis Sultan, their interests in the partnership, and it is my proposal that my son shall purchase a 25% interest and my wife a 24% interest, leaving me a 51% interest in the business.

To accomplish this purpose, I offer to purchase from you your 42% interest in Edward D. Sultan Co. for cash, payable as follows: A sum equivalent to your capital investment plus your unpaid profits held by the partnership accumulated to January 31, 1948, immediately upon acceptance of this offer; the balance due you, representing earnings for the year ended January 31, 1949, will be paid to you immediately upon receipt of our auditor's statement showing the balance due you. As settlor of the Trust, I will consent to such sale, and my son, Edward Dexter Sultan, Jr., will also consent as the beneficiary.

Your prompt consideration of this proposal will be appreciated.

Very truly yours,

/s/ EDWARD D. SULTAN.

EDS:ne

EXHIBIT No. 12

[Letterhead of Bishop Trust Company, Limited]

Mr. Edward D. Sultan February 9, 1949  
Edward D. Sultan Co.  
P.O. Box 301, Honolulu 9, Hawaii

Re: Edward D. Sultan Trust

Dear Mr. Sultan:

Acknowledgment is made of your letter addressed to Ernest Walter Sultan and Bishop Trust Company, Ltd., Trustees of the Edward D. Sultan Trust, offering to purchase from the Trust its 42% interest in the Edward D. Sultan Co. Your offer as outlined in the fifth paragraph of your letter is acceptable to us co-Trustee, provided we are furnished with a consent and approval of the sale by Ernest Walter Sultan, our co-Trustee, and formal approval and consent by yourself as Settlor and your son, Edward D. Sultan, Jr., as beneficiary. These latter two consents could be prepared in a formal way by Mr. Milton Cades in a manner that would be suitable for the Trust records. A simple letter by the co-Trustee approving of the sale as outlines in your letter would be sufficient from him.

We would call to your attention the fact that inasmuch as payments of \$300 per month are to be made from the income of the Trust from now on to your son until he attains the age of thirty years, major changes in the portfolio of the Trust will be necessitated in order to have securities therein that will produce sufficient income each year to insure

## Exhibit No. 12—(Continued)

these monthly payments. When the sale of the business goes through, we will make a review of the portfolio and will make recommendations to our co-Trustee and yourself.

Very truly yours

/s/ E. BENNER, Jr.  
Vice-President.

EB:GED

## EXHIBIT No. 13

## BILL OF SALE

This indenture, made as of the close of business on January 31, 1949, by and between Edward D. Sultan Co., a special partnership composed of Edward D. Sultan of Honolulu, City and County of Honolulu, Territory of Hawaii, as General Partner, and Ernest Walter Sultan of Los Angeles, County of Los Angeles, State of California, and Bishop Trust Company, Limited, a Hawaiian corporation, Trustees under Deed of Trust dated August 28, 1941, made by Edward D. Sultan as Settlor, as Special Partner, hereinafter called the "Seller", and Edward D. Sultan, Olga L Sultan and Edward D. Sultan, Jr., copartners doing business under the firm name and style of Edward D. Sultan Co., hereinafter called the "Purchaser",

Witnesseth That:

The Seller, for and in consideration of the sum of One Dollar (\$1.00), lawful money of the United States of America, and other good and valuable

Exhibit No. 13—(Continued)

consideration to it paid, the receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign, transfer, set over, confirm and deliver unto the Purchaser, and its successors and assigns, forever:

All and singular, the rights, property, assets and privileges owned by the Seller, as shown on the statement of assets and liabilities prepared by Tenent & Greany, dated as of the close of business on January 31, 1949, a copy of which is attached hereto, incorporated herein and made a part hereof for all purposes, including particularly, but not in anywise limiting the generality of the foregoing, all chattels, leaseholds, improvements, machines and equipment, all furniture, office equipment, office machinery, appliances and devices, all files, records, books, accounts, inventories, together with all other personal property, goods and chattels of every kind and description and wheresoever situate, all good will, trade names, trade connections, licenses and all contracts and agreements, including any and all rights under policies of indemnity, fidelity or other bonds or insurance of any and every kind, or cash on hand or in bank or banks, bonds, mortgages, conditional sales agreements, accounts and bills receivable, promissory notes, claims, demands, equities and choses in action, and all other property and assets, tangible and intangible, of every kind or nature, owned or claimed by the Seller and shown on said balance sheet.



## Exhibit No. 13—(Continued)

To Have and to Hold the same, together with all improvements, rights, easements, privileges, rents, issues and profits and appurtenances to the same or any part thereof belonging or appertaining, or held and enjoyed therewith, unto the Purchaser, its successors and assigns, absolutely and forever, or in fee simple, as the case may be.

And the Purchaser, in consideration of the foregoing, does hereby covenant and agree that it will, and by these presents does assume all of the liabilities, obligations and indebtedness of the Seller shown on said statement of assets and liabilities attached hereto, and does covenant and agree to pay and discharge the same as fully and completely as though the said liabilities, obligations and indebtedness had been incurred directly by said Purchaser, and to indemnify and hold harmless the said Seller from all liability, expense or obligations upon the same or arising in connection therewith.

And for the consideration aforesaid, the Seller, for itself, its successors and assigns, does hereby irrevocably appoint the Purchaser, its successors and assigns, its true and lawful attorney, in its name, place and stead, to ask, demand, sue for and recover any and all moneys, assets, or other property conveyed and transferred hereby or intended so to be, and the rights and benefits thereof, and does further covenant that it, the Seller, will at any time at the request of the partnership make, do, execute and deliver all such receipts, powers of

Exhibit No. 13—(Continued)

attorney and further instrument or instruments for the better and more effectual vesting and confirming of all right and interest, property, claims and demands hereinabove conveyed and assigned, or intended so to be, as the Purchaser reasonably may require.

In Witness Whereof, the parties hereto have executed these presents the day and year first above written.

EDWARD D. SULTAN CO.,  
a special partnership

/s/ EDWARD D. SULTAN,  
General Partner

/s/ ERNEST WALTER SULTAN,  
BISHOP TRUST COMPANY,  
LIMITED

[Seal]

By /s/ E. BENNER, JR.,  
Its Vice President

By /s/ W. E. HARRISON,  
Its Vice President  
Trustees as aforesaid  
Special Partner, Seller

EDWARD D. SULTAN CO.,  
a co-partnership

/s/ EDWARD D. SULTAN,

/s/ OLGA L. SULTAN,

/s/ EDWARD D. SULTAN, JR.  
Purchaser

## Exhibit No. 13—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 21st day of February, 1949, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires 6-30-49.

State of California,  
County of Los Angeles—ss.

On this 24th day of Feb., 1949, before me personally appeared Ernest Walter Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed in his individual capacity and as Co-Trustee under deed of trust of Edward D. Sultan.

[Seal] /s/ HARRIETT R. BARKER,  
Notary Public, Los Angeles County, California. My  
Commission expires January 26, 1950.

State of California,  
County of Los Angeles—ss.

I, W. G. Sharp, County Clerk and Clerk of the Superior Court of the State of California, in and

## Exhibit No. 13—(Continued)

for the County of Los Angeles, which Court is a Court of Record, having by law a seal do hereby certify that Harriett R. Barker whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, a Notary Public in and for Los Angeles County, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgments of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 25th day of Feb., 1949.

[Seal] /s/ W. G. SHARP,

County Clerk and Clerk of the Superior Court of the State of California, in and for the County of Los Angeles.

## Exhibit No. 13—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 8th day of March, 1949, before me appeared E. Benner, Jr. and W. E. Harrison, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Vice President, respectively, of Bishop Trust Company, Limited, a Hawaiian corporation, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr. and W. E. Harrison acknowledged said instrument to be the free act and deed of said corporation as such Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires 6-30-49.

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 7th day of March, 1949, before me personally appeared Olga L. Sultan, to me known to be the person described in and who executed the



Exhibit No. 13—(Continued)

foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,  
Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires 6-30-49.

State of California,  
County of San Mateo—ss.

On this 1st day of March, 1949, before me personally appeared Edward D. Sultan, Jr., to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ MABEL WEAVER,  
Notary Public in and for the County of San Mateo,  
State of California. My Commission expires  
Oct. 17, 1952.

State of California,  
County of San Mateo—ss.

I, W. H. Augustus, County Clerk of the County of San Mateo, State of California, and ex-officio clerk of the Superior Court thereof, the same being a Court of Records, having by law, a seal, do hereby certify, That Mabel Weaver whose name is subscribed to the Certificate of the proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking of such proof and acknowledgment, a Notary Public, in and for said County, residing therein, duly commissioned

## Exhibit No. 13—(Continued)

and sworn, and duly authorized by the laws of said State to administer oaths, take acknowledgments and proofs of deeds or conveyances, for land, tenements or hereditaments in said State, to be recorded therein. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature of said Certificate of proof or acknowledgment is genuine, and that said instrument is executed and acknowledged according to the laws of said State. I further certify that an impression of the seals of Notaries Public is not required by law to be filed in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said Superior Court, this 1st day of March, 1949.

[Seal] W. H. AUGUSTUS, County Clerk  
By /s/ GERTRUDE V. HOVIG, Deputy

Edward D. Sultan Company  
Statement of Financial Position  
January 31, 1949

## Current Assets

Cash on Hand and in Banks.....	\$151,764.83	
Accounts Receivable—Less Estimated Uncollectible .....	\$13,036.51	98,459.04
Merchandise Inventory—Lower of Cost or Market.....		94,270.38
Prepaid Rent, Deposits, Etc. ....		1,300.00
		<hr/>
Total Current Assets.....	\$345,794.25	

Exhibit No. 13—(Continued)

Other Assets

Leasehold Improvements and Equip-  
ment—Less Accrued

Depreciation . . . . . \$16,584.14      42,758.33

Total Assets . . . . . \$388,552.58

Less Current Liabilities

Accounts Payable, Accrued Bonus  
and Sundry Taxes . . . . . \$ 30,551.89

Capital and Credit Balances Payable  
to Partners of Terminated Partnership:

Trustees for Edward D. Sultan, Jr. . . . . 137,357.62

Edward D. Sultan . . . . . 66,072.81

Ernest W. Sultan . . . . . 9,023.42

Gabriel L. Sultan . . . . . 9,023.42

Marie H. Cohen . . . . . 9,023.42

Total Current Liabilities . . . . . \$261,052.58

Edward D. Sultan—Capital and

Credit Balance . . . . . \$127,500.00

EXHIBIT No. 14

STATEMENT OF DISSOLUTION OF THE  
SPECIAL PARTNERSHIP

Of Edward D. Sultan Co., Honolulu, County of  
Honolulu, T. H., February 21, 1949.

To the Treasurer of the Territory of Hawaii,  
Honolulu, T. H.

Sir:—

This Is to Certify, That on the first day of

## Exhibit No. 14—(Continued)

February, 1949, the Special Partnership firm of Edward D. Sultan Co., maintaining and carrying on a wholesale and retail jewelry business at Honolulu in the district of Honolulu, County of Honolulu, Territory of Hawaii, was dissolved by mutual consent, and in compliance with law, the following statement is herewith filed.

That the Partners of the said Special Partnership firm at the date of the dissolution were:

Edward D. Sultan, residing at Honolulu, T. H.; Ernest Walter Sultan, residing at Los Angeles, California; Marie Hilda Cohen, residing at San Francisco, California; Gabriel Louis Sultan, residing at San Francisco, California; General Partners.

Ernest Walter Sultan and Bishop Trust Company, Limited, Trustees under Deed of Trust of Edward D. Sultan, Los Angeles, California; Honolulu, T.H., Special Partner.

[Stamped]: Paid Mar. 11, 1949, Treasurer's Office, Territory of Hawaii.

Witness our hands this 21st day of February, A.D., 1949.

/s/ EDWARD D. SULTAN,

/s/ ERNEST W. SULTAN,

/s/ MARIE HILDA COHEN,

/s/ GABRIEL LOUIS SULTAN,

/s/ ERNEST WALTER SULTAN,

[Seal] BISHOP TRUST COMPANY,

LIMITED

/s/ By E. BENNER, JR., Its Vice Pres.

/s/ By W. E. HARRISON, Its Vice Pres.

Exhibit No. 14—(Continued)

Territory of Hawaii,  
City and County of Honolulu—ss.

On this 21st day of February, 1949, before me personally appeared Edward D. Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of  
Hawaii. My Commission expires 6/30/49.

State of California,  
County of Los Angeles—ss.

On this 24th day of Feb., 1949, before me personally appeared Ernest Walter Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed in his individual capacity and as Co-Trustee under deed of trust of Edward D. Sultan.

[Seal] /s/ HARRIET R. BARKER,

Notary Public, Los Angeles County, Calif. My  
Commission Expires January 26, 1950.

State of California,  
County of Los Angeles—ss.

On this 24th day of Feb., 1949, before me personally appeared Marie Hilda Cohen, to me known to be the person described in and who executed the



## Exhibit No. 14—(Continued)

foregoing instrument, and acknowledged that she executed the same as her free act and deed.

[Seal] /s/ HARRIET R. BARKER,  
Notary Public, Los Angeles County, Calif. My Com-  
mission expires January 26, 1950.

State of California,  
County of Los Angeles—ss.

On this 24th day of Feb., 1949, before me personally appeared Gabriel Louis Sultan, to me known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

[Seal] /s/ HARRIET R. BARKER,  
Notary Public, Los Angeles County, Calif. My  
Commission Expires January 26, 1950.

State of California,  
County of Los Angeles—ss. (Foreign)

I, W. G. Sharp, County Clerk of the Superior Court of the State of California, in and for the County of Los Angeles, which Court is a Court of Record, having by law a seal do hereby certify that Harriet R. Barker whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public in and for Los Angeles County, duly commissioned and sworn and residing in said County, and was, as such, an officer of said State, duly authorized by the laws

Exhibit No. 14—(Continued)

thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments in writing to be recorded in said State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting, and verily believe that the signature to the attached certificate is his genuine signature, and further that the annexed instrument is executed and acknowledged according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand and annexed the seal of the Superior Court of the State of California, in and for the County of Los Angeles, this 25th day of Feb., 1949.

[Seal] /s/ W. G. SHARP,  
County Clerk and Clerk of the Superior Court of  
the State of California, in and for the County  
of Los Angeles.

Territory of Hawaii,  
City and County of Honolulu—ss:

On this 8th day of March, 1949, before me appeared E. Benner, Jr. and W. E. Harrison, to me personally known, who, being by me duly sworn, did say that they are the Vice President and Vice President, respectively, of Bishop Trust Company,

## Exhibit No. 14—(Continued)

Limited, a Hawaiian corporation, Co-Trustee under Deed of Trust of Edward D. Sultan dated August 28, 1941, the corporation described in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and the said E. Benner, Jr. and W. E. Harrison acknowledged said instrument to be the free act and deed of said corporation as such Co-Trustee.

[Seal] /s/ FRIEDA H. ROBERT,

Notary Public, First Judicial Circuit, Territory of Hawaii. My Commission expires 6-30-49.







Schedule of Receipts of Distributive Shares of Income  
of Edward D. Sultan Co.

	Fiscal Year Ending January 31					Total
	1942	1943	1944	1945	1947	
<u>Distributive share of income</u>	<u>\$24,754.29</u>	<u>\$114,112.58</u>	<u>\$154,097.03</u>	<u>\$200,029.40</u>	<u>\$40,341.86</u>	<u>\$690,204.91</u>
	24,754.29					
		3,000.00				
		108,913.64				
		2,198.94	16,643.00			
			19,000.00			
			21,000.00			
			97,457.03			
				83,029.40		
				50,000.00		
				25,000.00		
				42,000.00		
				99,698.24		
					2,155.75	
					10,000.00	
					28,136.11	
					45,425.64	
					10,745.87	
					40,341.86	
					10,745.87	
					46,425.64	
					10,745.87	
					40,341.86	
					46,425.64	
					10,745.87	
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EDWARD D. SULTAN TRUST

Inventory of Assets  
August 28, 1950

Cash						\$ 9,842.58
<u>Bonds</u>						
U. S. Savings Bonds						
\$ 6,500.00 maturity value - Series "F" due July 1, 1954				\$4,810.00		
34,000.00 " " " " " March 1, 1955				25,160.00		
135,000.00 " " " " " May 1, 1956				<u>99,900.00</u>	\$129,870.00	
U. S. Treasury Bonds - Series "A" - 1-1/8% due Jan. 1, 1951					<u>42,002.61</u>	171,872.61
<u>Note Receivable</u>						
Note of Edward D. Sultan, Jr., dated April 27, 1949,						
Interest 3% per annum, due December 28, 1957						
Note secured by assignment of Edward D. Sultan, Jr.'s						
interest in the Edward D. Sultan Trust and copartnership						
known as Edward D. Sultan Co. - Balance						<u>60,782.14</u>
						<u>\$242,497.33</u>









[Title of Tax Court and Causes No. 24513-4.]

## FINDINGS OF FACT AND OPINION

The husband-petitioner created a trust for the benefit of his minor son and conveyed to it a 42 per cent interest in his business. The settlor was not a trustee. The trustees became a special partner in a partnership in which the settlor and others were general partners for the operation of the business theretofore conducted by the petition as a sole proprietorship. One of the trustees insisted on, and received, the trust's distributive share of profits as soon as they were available for distribution.

Held, that the trust was a bona fide partner and that its distributive share of partnership profits was not income of the petitioners.

Held, further, that the settlor did not have any rights in the trust corpus or income sufficient to make the income of the trust taxable to him and his wife.

Milton Cades, Esq., and Urban E. Wild, Esq., for the petitioners.

Robert G. Harless, Esq., for the respondent.

The respondent determined deficiencies in income taxes of the petitioners as follows:

Petitioner	Year	Amount
Edward D. Sultan	1944	\$145,292.17
	1945	183,632.00
	1946	60,694.17
Olga L. Sutton	1946	17,091.57

The issue to be decided is whether the distrib-

utive portion of partnership income payable to, and paid to, a trust created by the settlor and which became a special partner in the operation of a business was income to the settlor. The settlor's wife is involved only because of the community property law of Hawaii which became effective on June 1, 1945.

#### Findings of Fact

The petitioners are, and at all times material to these proceedings were, husband and wife, and residents of the Territory of Hawaii. Their income tax returns were filed with the Collector of Internal Revenue for the District of Hawaii. They have one child, Edward D. Sultan, Jr., (whose name was changed from Edward Dolph Sultan) born December 28, 1927.

Edward D. Sultan, one of the petitioners, and herein usually referred to as the petitioner, has been in the wholesale jewelry or jewelry manufacturing business since he was about 10 years old. In the early part of 1941, he was in the wholesale jewelry business as an individual in Honolulu. That business consisted of dealing in watches, diamonds, silverware, general jewelry lines, and everything associated with a jewelry business.

The petitioner is primarily a salesman. The manager of the business was his brother, Ernest W. Sultan, who received as compensation 25 per cent of the net profits of the business. The petitioner devoted most of his time to selling in the Far East and in the Pacific Islands. Ernest, in addition to managing the office part of the business, made some selling

trips prior to 1940. Ernest had no financial interest in the business but was very valuable to it because of his knowledge of the jewelry business.

For some time prior to August, 1941, the petitioner had been considering ways of protecting his family in the event of his illness or death, and also of interesting his son in the business. The son, who was 13 years old in 1941, was interested in the study of journalism and not in the jewelry business. The petitioner at that time was almost constantly in the care of doctors. In 1940, while the petitioner was on a trip, his brother Ernest became seriously ill and was away from the office for a few weeks.

Another brother of the petitioner, Gabriel, was a full-time salesman of the petitioner's merchandise in California. The petitioner's sister, Marie Hilda Cohen, was in San Francisco, where she and her husband owned a warehouse and they frequently supplied warehouse space for the petitioner's merchandise while it was awaiting shipment to Honolulu. In the early part of 1941, it was difficult to obtain shipping space. The petitioner's sister was a capable business woman.

The petitioner discussed with his brothers and sister possible methods of having his business carried on for the protection of his wife and son and of interesting his son in the business. He also discussed the matter with his wife, with a relative in the United States who was a lawyer, and with counsel in Honolulu. Out of these discussions there was evolved the idea of the creation of a trust and the formation of a partnership. The petitioner knew of

one instance in which a jewelry business that was in bad financial shape had been rehabilitated under the management of a trust company. He wanted a trust company as trustee of the trust to be created for his son for the benefit of the advice that it could give and for the management that it could provide in the event that he was not able to carry on the business. He wanted his brothers and sister associated with him in the business for the assistance they could give as they had in the past.

The Bishop Trust Company, Limited, an Hawaiian corporation, conducted a trust company business in the Territory of Hawaii. Its main business was the administration of estates, trusts, guardianships, agency accounts, and it acted as transfer agent, and similar business. In its fiduciary capacity, it often operated businesses in connection with its administration of estates or trusts.

On August 28, 1941, the petitioner Edward D. Sultan created the Edward D. Sultan Trust, naming as trustees Ernest W. Sultan and Bishop Trust Company, Limited. The trust instrument recited the delivery to the trustees of the sum of \$42,000 by the settlor, to be used to purchase a 42 per cent interest in a partnership known as Edward D. Sultan Co. Income was to be accumulated until the settlor's son, Edward Dolph Sultan, became 21 years of age, but with discretion in the trustees to pay out not more than \$3,600 per year for the maintenance, support and education of the beneficiary. Beginning at age 21, the beneficiary was to receive



\$300 per month; at age 25 he was to receive a portion of the accumulated income in a lump sum. At the beneficiary's age of 30 years, the trust was to terminate and he was to receive the trust corpus, together with any cash in the estate not in excess of \$20,000. Any remaining cash was to be used to purchase an annuity for the beneficiary. If the beneficiary died before age 30, corpus and income were to go to the wife of the settlor or, in the event of the happening of specified events, to the settlor's sister and brothers.

The trust instrument gave the trustees the usual powers to hold and manage the trust property, collect the income, and invest and reinvest. The trustees were not restricted to investments of the type that are permitted by law, with provisos that during the lifetime of the settlor the trustees were to obtain the settlor's consent to investments, and upon the settlor's death they were to be restricted to legal trust investments. However, the trustees could in any event make loans or advances to the partnership without liability for resulting losses. The trust was irrevocable. The corporate trustee was given custody of all money and securities in the trust estate. The settlor reserved the right to transfer additional property to the trust. Under the terms of the trust instrument neither the corpus nor income of the trust was ever to be paid to the settlor. The trust was conditioned upon obtaining court approval for the purchase of a 42 per cent interest in Edward D. Sultan Co., and approval of the trustees becoming a special partner therein. If such approval was

not obtained within 60 days, the trust indenture was to be null and void.

On August 30, 1941, a partnership was formed under the name of Edward D. Sultan Co. It was a special partnership. The general partners were Edward D. Sultan, Ernest W. Sultan, Marie Hilda Cohen and Gabriel L. Sultan. The trustees of the Edward D. Sultan trust were a special partner. The initial capital of the partnership was \$100,000. Contributions of capital and partnership interests were as follows:

Partner	Contribution	Interest
Edward D. Sultan .....	\$46,000	46%
Ernest W. Sultan .....	4,000	4%
Marie Hilda Cohen .....	4,000	4%
Gabriel L. Sultan .....	4,000	4%
Trustees of Edward D. Sultan		
Trust .....	42,000	42%

The partnership was to acquire the assets and carry on the business theretofore conducted by Edward D. Sultan. The general partners actively engaged in the business were to receive compensation for services rendered in such amounts as the general partners might agree on, and such compensation was to be charged as an expense in computing net profits. As long as Ernest W. Sultan was active in the business, he was to receive 25 per cent of the net profits. The remainder of the profits was to be divided in proportion to the capital contributions of the partners. The provision for Ernest W. Sultan to receive 25 per cent of the net profits was stricken

from the agreement by amendment dated June 9, 1942. Profits could be withdrawn at such time as the general partners deemed advisable.

Only the general partners had authority to transact partnership business and incur obligations. The policy of the partnership was to be established by the general partner or partners owning the majority in interest of the capital. No general partner could assign or mortgage his or her interest, but any partner could purchase the interest of any other partner. The special partner could assign its interest with the consent of the general partners.

Proper partnership books of account were to be kept. The books were to be audited periodically and copies of auditors' reports were to be furnished to each partner. Annual accounts were to be taken showing the interest of each partner and copies thereof were to be sent to each.

The partnership could be terminated by a majority in interest of the general partners on two months' written notice. Edward D. Sultan had the option to purchase the interest of any deceased general partner or of any partner who gave notice of termination. Such purchase was to be at book value without allowance for good will.

Originally the partnership was to continue until April 30, 1943, and thereafter from year to year until terminated by a general partner on six months' notice. By amendment dated February 2, 1945, the term was extended to January 31, 1946, and thereafter from year to year.

By bill of sale dated as of the close of business

on August 30, 1941, the petitioner Edward D. Sultan transferred to the partnership all of the rights, property, assets, privileges and business formerly carried on by him, having a stated value of \$100,000. He received back demand notes made by him on August 28, 1941, payable to the trustees of the Edward D. Sultan trust in the amount of \$42,000 and to Ernest W. Sultan, Marie Hilda Cohen and Gabriel L. Sultan, each in the amount of \$4,000. He also received a 46 per cent interest in the partnership.

The required certificate of partnership and affidavits were filed and publication was duly made.

On September 5, 1941, the trustees of the Edward D. Sultan trust filed in the First Circuit Court of the Territory of Hawaii a petition to become a special partner in Edward D. Sultan Co., and to invest \$42,000 in the partnership for a 42 per cent interest therein. On September 9, 1941, the court **entered** an order in which it instructed, authorized, and directed the trustees to become a special partner in the partnership and to invest \$42,000 therein.

On or before March 15, 1942, the petitioner Edward D. Sultan filed a gift tax return for the year 1941 in which he reported a gift of \$42,000 to the Edward D. Sultan trust. The respondent determined that the value of the 42 per cent interest in the partnership was greater than the reported amount of \$42,000 and that additional gift tax was due in the amount of \$81.99, which amount the petitioner paid.

Ernest W. Sultan managed the partnership busi-



ness until he became ill in 1942 and was required to leave the islands. The petitioner at that time took over the management. Ernest recovered quickly and, at the request of the petitioner, he opened a buying office in New York for the partnership and continued in the service of the partnership as a buyer.

The corporate trustee was given annual auditors' statements of the partnership business, and the petitioner gave it oral interim statements. The petitioner discussed business policies with officers of the corporate trustee, and conferred frequently with the other trustee on partnership matters.

The partnership made it a regular practice to pay for merchandise on the day of receipt of the invoice even though delivery to it was delayed, sometimes for months, due to the demand for shipping space and restrictions on shipment by parcel post. This practice, and an expansion of the business following the outbreak of World War II, brought about a need for more capital in the business. In order to provide the needed capital and to improve the partnership's credit rating, the partners agreed in 1942 or 1943 to leave earnings in the amount of \$100,000.00 in the business to be used as working capital. This matter was discussed with officers of the corporate trustee.

The petitioner and his brother Ernest W. Sultan received compensation for services rendered to the partnership for the periods and in the amounts as follows:

Fiscal Period

Sept. 1, 1941 to Jan. 31, 1942: Edward D. Sultan,



\$6,500.00; Ernest W. Sultan, \$23,000.00.

Feb. 1, 1942 to Jan. 31, 1943: Edward D. Sultan, \$20,431.13; Ernest W. Sultan, \$95,169.99.

Feb. 1, 1943 to Jan. 31, 1944: Edward D. Sultan, \$42,000.00; Ernest W. Sultan, \$60,000.00.

Feb. 1, 1944 to Jan. 31, 1945; Edward D. Sultan, \$42,000.00; Ernest W. Sultan, \$60,000.00.

Feb. 1, 1945 to Jan. 31, 1946: Edward D. Sultan, \$42,000.00; Ernest W. Sultan, \$50,000.00.

Feb. 1, 1946 to Jan. 31, 1947: Edward D. Sultan, \$64,000.00; Ernest W. Sultan, \$15,000.00.

During the existence of the special partnership, the trustee was quite insistent on having the special partner's distributive share of profits paid over to it as soon as possible after financial statements were prepared. Payments of the trust's distributive share of the partnership profits were made to the corporate trustee as follows:

Payments Made

June 23, 1942 .....	\$ 24,754.29
March 15, 1943 .....	3,000.00
March 23, 1943 .....	108,913.64
October 8, 1943 .....	2,198.94
March 15, 1944 .....	16,640.00
June 14, 1944 .....	19,000.00
September 2, 1944 .....	21,000.00
September 21, 1944 .....	97,457.03
March 12, 1945 .....	83,029.40
March 17, 1945 .....	50,000.00
March 21, 1945 .....	25,000.00
April 6, 1946 .....	42,000.00
May 21, 1946 .....	99,698.24

January 14, 1949 .....	2,155.75
March 14, 1949 .....	10,000.00
April 28, 1949 .....	85,357.62

In 1948, the partnership business fell off, due partly to increased competition. In January, 1949, the petitioner purchased the interests of the three other general partners, namely, Ernest W. Sultan, Marie Hilda Cohen, and Gabriel L. Sultan. A formal bill of sale was executed wherein the three selling partners agreed to the termination of their interests in the partnership.

In February, 1949, the petitioner offered to purchase, and the trustees of the Edward D. Sultan trust agreed to sell, the trust's interest in the partnership. The price agreed upon, in an exchange of letters, was a sum equivalent to the capital investment of the trust in the partnership, plus the amount of the unpaid profits accumulated to January 31, 1949. At that time, the beneficiary of the trust, Edward D. Sultan, Jr., had attained his majority, and had been active in the partnership business during his summer vacations from college.

The officers of the corporate trustee gave thorough consideration to the petitioner's offer before accepting it. They were aware of the need for additional capital in the business and of the possible decrease in the business of the partnership. They decided that it would be to the best interest of the trust to sell its share of the partnership to the petitioner. The co-trustee, Ernest W. Sultan, approved the sale.

The agreement was carried out through the me-

dium of a bill of sale whereby the petitioner and the trustees of the Edward D. Sultan trust, as the "seller", sold the assets and business of the partnership to a new partnership known as Edward D. Sultan Co., in which the partners were the petitioner Edward D. Sultan, the petitioner Olga L. Sultan, and Edward D. Sultan, Jr.

The new partnership started with a capital of \$250,000. Of this amount, the petitioner Edward D. Sultan contributed \$127,500, the petitioner Olga L. Sultan contributed from her own funds \$60,000, and Edward D. Sultan, Jr., contributed \$62,500. The son, Edward D. Sultan, Jr., obtained the amount of his contribution by way of a loan made to him by the Bishop Trust Company, Limited, from the corpus of the Edward D. Sultan trust. The money was loaned on the note of the son, which note was endorsed by both of the petitioners. As additional security for the loan, Edward D. Sultan, Jr., assigned to the trust company his remainder interest in the trust and his right to monthly payments of \$300 which began when he reached the age of 21 years.

The petitioner never received from the trust any of its income. During the years involved in these proceedings, the petitioner Edward D. Sultan supported his wife and son from his own income.

At August 28, 1950, the end of the last fiscal year of the trust prior to the hearing of these proceedings, the trustees of the Edward D. Sultan trust held intact the corpus of the trust estate, which consisted of the following items: cash, \$9,842.58; United

States government bonds, \$171,872.61; note receivable of Edward D. Sultan, Jr., \$60,782.14, the total of which amounted to \$242,497.33.

The Edward D. Sultan trust duly filed Federal fiduciary tax returns each year and paid the tax shown to be due thereon. The partnership, Edward D. Sultan Co., filed its partnership tax returns on an accrual and fiscal year basis ending on the 31st day of January. Its first return was filed on that basis for the fiscal year ended January 31, 1942. Returns on that basis were filed for subsequent years ending January 31, 1943 to 1949, inclusive.

By virtue of the Hawaiian community property law, which became effective as of June 1, 1945, the petitioner Olga L. Sultan was entitled to one-half of all of the income of her husband, the petitioner Edward D. Sultan, from and after that date. The entire deficiency proposed against the petitioner Olga L. Sultan arises by reason of her community property interest in the income of her husband.

The petitioner Edward D. Sultan, Ernest W. Sultan, Marie Hilda Cohen, Gabriel L. Sultan and the Edward D. Sultan trust really and truly intended to join together for the purpose of carrying on the business of Edward D. Sultan Co. and sharing in its profits and losses.

The Edward D. Sultan trust was a bona fide trust created for the benefit of Edward D. Sultan, Jr., and the petitioners did not have any substantial control over, or interest in, the corpus or income thereof.



## Opinion

Arundell, Judge: The principal issue in these proceedings is whether the partnership organized under the name of "Edward D. Sultan Co." is to be recognized as a valid partnership and the income derived from its operations to be treated as the distributive income of the persons who were named in the partnerships agreement as partners. The respondent, in his determination of deficiencies, has refused to recognize the trust as a partner and has advised the petitioner Edward D. Sultan that the income received and reported by the trust is taxable to him.

The proceedings have been argued by both sides on two questions: (1) Should the trust be recognized as a bona fide partner; (2) whether the doctrine of the Clifford case\* supports taxation of the trust income to the settlor of the trust.

The partnership question. The question of whether a "family partnership is real for income-tax purposes depend upon 'whether the partners really and truly intended to join together for the purpose of carrying on the business and sharing in the profits and losses or both. And their intention in this respect is a question of fact \* \* \*'". Commissioner vs. Culbertson, 337 U.S. 733. In the Culbertson case, the Court also said that the question of recognition of family partnerships depends upon whether "the parties in good faith and acting with a business pur-

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\* Helvering vs. Clifford, 309 U.S. 331.



pose intended to join together in the present conduct of the enterprise.”

The evidence in these proceedings establishes to our satisfaction that the parties to the original partnership agreement really and truly intended to join together for the purpose of carrying on the business that had theretofore been conducted by Edward D. Sultan as a sole proprietorship. The respondent, in taxing the partnership income to the petitioners, places stress on the control over the business that was in Edward D. Sultan. We had before us a similar situation in the case of Theodore D. Stern, 15 T.C. 521. In that case, the taxpayer owned the majority of the shares of a corporation. He transferred some of his shares to four trusts for the benefit of his wife and three children, dissolved the corporation, and continued the business in partnership form, in which partnership the taxpayer was the general partner and the four trusts were limited partners. It was found as a fact in that case that the taxpayer “chose to use trusts rather than transfer the interest directly to his wife and children so that he could retain control over the business\*\*\*.” In that case, we had the questions of whether the taxpayer had made completed gifts of the stock and whether the trusts should be recognized as partners in the business of the taxpayer. Both were resolved in favor of the taxpayer. On the essential facts, there is little to distinguish these proceedings from the Stern case. In that case the taxpayer was the trustee of the trusts that he created. Here, we have independent trustees, and there is evidence

that the corporate trustee was well aware of its independence and insisted on having distributed it to the portion of partnership earnings to which it was entitled under the partnership agreement. On the matter of control of the business, which remained in the settlor both in the Stern case and in these cases, we said in the Stern case:

He retained entire control in himself but that is of no particular significance since limited partners normally have no part in the control or management of the business.

The above language was quoted with approval in the case of *Bartholomew vs. Commissioner*, 186 F. 2d 315, 318.

We further said in the Stern case that:

A substantial economic change took place in which the petitioner gave up, and the beneficiaries indirectly acquired an interest in, the business. There was real intent to carry on the business as partners. The distributive shares of partnership income belonging to the trust did not benefit the petitioner.

Upon appraisal of all of the evidence in these proceedings, it is our conclusion that the trust created by the petitioner Edward D. Sultan in 1941 should be recognized as a partner in the conduct of the business and that its distributive share of the partnership income was not income of the petitioners. The factual question, as we have said, is one of intention of the parties, and this is to be resolved "from testimony disclosed by their 'agreement, considered as a whole, and by their conduct in execu-

tion of its provisions'." Commissioner vs. Culbertson, supra. There cannot be any serious question as to the validity of the agreements in this case. Both the trust agreement and the partnership agreement were reduced to writing. The partnership agreement clearly makes the trust a "special partner" which, as we understand it, is the same, in law, as a limited partner in the States in the United States. The conduct of the parties in execution of their agreement establishes the genuineness of their intention to form a partnership. The profits of the business no longer belonged to the petitioner Edward D. Sultan. The special partner had a right to a portion of the profits and it received its portion and paid the taxes due thereon.

Both parties cite numerous cases in support of their positions. The Supreme Court has advised that family partnership cases are essentially factual. As such, previously decided cases are not particularly helpful. But a few may be mentioned for their background facts and as a help in pointing up the reasons for the conclusion we have reached in these proceedings. In most of the cases cited by the respondent, the settlors of the trusts were the trustees and had a substantial degree of control. *Losh vs. Commissioner*, 145 F. 2d 456; *Hash vs. Commissioner*, 152 F. 2d 722; *Eisenberg vs. Commissioner*, 161 F. 2d 506. In the case of *Russell Giffen*, 14 T.C. 1272, aff'd., 190 F. 2d 188, the assets placed in trust were so heavily burdened with debt that it was obvious that the beneficiaries would receive no benefit from the trust for a long period of

time. By way of contrast, in these proceedings the petitioner Edward D. Sultan definitely and irrevocably parted with a substantial portion of his business, and the income produced by that portion was no longer his. That income went to the trust company which was charged with holding and safeguarding the trust moneys and securities.

We conclude, as shown by our findings of fact, that the trust was a bona fide partner and that its income should not be taxed to the petitioners.

The Clifford case. In the Clifford case, trust income was taxed to the settlor because of the "bundle of rights which he retained." In many succeeding cases, it has been pointed out that some of the basic considerations in that case were the short term of the trust, the fact of the settlor being the trustee, the broad discretion in the settlor-trustee as to the determination of the income to be distributed, and the reversion of the corpus to the settlor. Here, the trust was to endure until the beneficiary who was then 13 years old attained the age of 30 years—in a period of 17 years. The settlor in these cases was not the trustee. The settlor, Edward D. Sultan, carefully selected others as trustees, and the evidence clearly establishes that the corporate trustee stood firm in its duty of protecting the beneficiary. It was insistent on having actual distribution made as soon as possible. It invested the moneys distributed to it, and at the time of the latest accounting it had a corpus in the amount of \$242,497.33. In these cases there was no possibility of reversion to the settlor. None of the property or



income of the trust estate under the terms of the instrument could ever be paid to the settlor. The factual differences between the trust in these cases and that in the Clifford case are so wide as to obviate the need for any extended discussion. We hold that the decision in the Clifford case has no application to these cases.

Neither party raises the question of whether a trust can be a member of a partnership. Perhaps this is because we have heretofore decided that a trust can be recognized as a partner for tax purposes. Theodore D. Stern, *supra*, Louis R. Eisenmann, 17 T.C.—(Feb. 29, 1952).

We conclude that the respondent erred in including in the income of the petitioners the distributive share of partnership income of the Edward D. Sultan trust.

Reviewed by the Court.

Decisions will be entered under Rule 50.

Opper, J., dissenting: By definition the aspect of services has been eliminated in this case from the series of tests described in Culbertson.<sup>1</sup> That is be-

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<sup>1</sup> “\*\*\*The question is\*\*\* whether, considering all the facts—the agreement, the conduct of the parties in execution of its provisions, their statements, the testimony of disinterested persons, the relationship of the parties, their respective abilities and capital contributions, the actual control of income and the purposes for which it is used, and any other facts throwing light on their true intent—the parties in good faith and acting with a business purpose intended to join together in the present conduct of the enterprise. \* \* \* ” *Commissioner vs. Culbertson*, 337 U.S. 733, 742.



cause a limited partner is involved only to the extent of the property committed to the venture. Theodore D. Stern, 15 T.C. 521. But if we are to look only to the property we should, it seems to me, at least be satisfied that the usual attributes of ownership inhere in its putative owner. Cf. *Helvering vs. Clifford*, 309 U.S. 331. Here the trust was compelled to use the alleged gift to acquire an "interest" in the business; had no control of the property; could not sell or dispose of it; could not freely withdraw profits; was confined to its investment in the partnership business; and compelled to retain that investment unless the will of the general partners, including petitioner, permitted otherwise.

As we said in *Ralph C. Hitchcock*, 12 T.C.22,30,31: "These documents, taken in their entirety, negative any suggestion that the petitioner, as donor, intended to absolutely and irrevocably divest himself of the dominion and control of the subject matter of his purported gifts. \* \* \* This is not a case where the children were at liberty at any time to withdraw or assign their interests in the business or where they possessed an unqualified right to receive their full share of each year's earnings." This can scarcely be termed true ownership and eliminates the only basis on which the trust's participation in the partnership can be justified under the Culbertson tests. We have never gone so far, even in the Stern case, and I think we should not do so now. See *Losh vs. Commissioner* (C.A. 10), 145 F. 2d 456; *Feldman vs. Commissioner* (C.A.4), 186 F. 2d 87.

Hill, Harron, Le Mire and Raum, J. J., agree with this dissent.

The Tax Court of the United States  
Washington

Docket No. 24513

EDWARD D. SULTAN,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

DECISION

Pursuant to the Opinion of the Court promulgated July 3, 1952, the respondent herein, on October 9, 1952, filed a recomputation for entry of decision, and the petitioner herein, on October 30, 1952, filed an acquiescence in the respondent's recomputation. Wherefore, it is

Ordered and Decided: That there are no deficiencies in income tax for the taxable years 1944 and 1945; that there is a deficiency in income tax for the taxable year 1946 in the amount of \$2,767.74; and that there is an overpayment in income tax for the taxable year 1944 in the amount of \$450.00, all of which was paid within two years before the filing of the claim for refund.

Entered Oct. 31, 1952.

[Seal]        /s/ C. R. ARUNDELL,

Judge.

The Tax Court of the United States  
Washington

Docket No. 24514

OLGA L. SULTAN,

Petitioner.

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### DECISION

Pursuant to the Opinion of the Court promulgated July 3, 1952, the respondent herein, on October 9, 1952, filed a recomputation for entry of decision, and the petitioner herein, on October 30, 1952, filed an acquiescence in the respondent's recomputation. Wherefore, it is

Ordered and Decided: That there is no deficiency in income tax for the taxable year 1946, and that there is an overpayment in income tax for the taxable year 1946 in the amount of \$2,060.17, all of which was paid within three years before the mailing of the notice of deficiency, which notice was mailed within three years from the time the return was filed by the taxpayer.

Entered Oct. 31, 1952.

[Seal]           /s/ C. R. ARUNDELL,  
                                Judge.

In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 24513

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

EDWARD D. SULTAN,  
Respondent on Review.

PETITION FOR REVIEW

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on October 31, 1952, "That there are no deficiencies in income tax for the taxable years 1944 and 1945; that there is a deficiency in income tax for the taxable year 1946 in the amount of \$2,767.74; and that there is an overpayment in income tax for the taxable year 1944 in the amount of \$450.00, all of which was paid within two years before the filing of the claim for refund." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Edward D. Sultan, is an individual, whose mailing address is 1025 Ala-kea Street, Honolulu, Territory of Hawaii, and who was, during the taxable years here involved, a resident of Honolulu, Territory of Hawaii. The said taxpayer filed his Federal income tax returns for the calendar years 1944, 1945 and 1946, the taxable years here involved, with the Collector of Internal Revenue for the District of Hawaii.

### Nature of Controversy

The sole question which was presented to and passed upon by the Tax Court of the United States is whether the income of a partnership in which the settlor-taxpayer was a general partner, and a trust created for the benefit of the taxpayer's minor son was designated as a special partner, was taxable to the taxpayer, in so far as the share thereof allocable to the trust was concerned, under the doctrine of *Helvering vs. Clifford*, (1940) 309 U. S. 331.

For some time prior to August, 1941, the taxpayer, Edward D. Sultan, was engaged in the wholesale jewelry or jewelry manufacturing business in the Hawaiian Islands. On August 30, 1941, a special partnership was organized in which the taxpayer, Edward D. Sultan, Ernest W. Sultan, Marie Hilda Cohen, and Gabriel L. Sultan were the general partners, and the trustees of the Edward D. Sultan Trust were named as special partner. Two days prior thereto, on August 28, 1941, the taxpayer cre-



ated the Edward D. Sultan Trust for the benefit of his minor son, naming the Bishop Trust Company, Limited, and Ernest W. Sultan, as trustees, to which trust he paid the sum of \$42,000 which it was required be used to purchase a 42 per cent interest in the partnership of Edward D. Sultan Company. The taxpayer then conveyed to the partnership the assets used in his jewelry business at a stated value of \$100,000 and received a 46 per cent interest in the partnership and the return to him of demand notes made by him on August 28, 1941, payable to the trustees of the Edward D. Sultan Trust in the amount of \$42,000 and to Ernest W. Sultan, Marie Hilda Cohen, and Gabriel L. Sultan, each in the amount of \$4,000.00.

Only the general partners had authority to transact partnership business and incur obligations.

In his notice of deficiency, the Commissioner held that the income of the partnership of Edward D. Sultan Company which had been returned in fiduciary tax returns filed by the Edward D. Sultan Trust for the years 1944, 1945 and 1946 was taxable to the taxpayer, Edward D. Sultan, settlor of the trust. The Tax Court of the United States disagreed with the Commissioner's determination and held that the settlor did not have sufficient control over the trust to make the income thereof taxable to him, that the trust was a bona fide partner in the partnership, and that its distributive share

of partnership income for each of the years involved did not constitute income of the taxpayer.

/s/ CHARLES S. LYON,  
Assistant Attorney General.

/s/ CHARLES W. DAVIS,  
Chief Counsel, Bureau of Internal  
Revenue,  
Attorneys for Petitioner on Review.

[Endorsed]: T.C.U.S. Filed Jan. 10, 1953.

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In the United States Court of Appeals  
for the Ninth Circuit

T. C. Docket No. 24514

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner on Review,

vs.

OLGA L. SULTAN,  
Respondent on Review.

### PETITION FOR REVIEW

To the Honorable Judges of the United States  
Court of Appeals for the Ninth Circuit:

The Commissioner of Internal Revenue hereby petitions the United States Court of Appeals for the Ninth Circuit to review the decision entered by The Tax Court of the United States in this proceeding on October 31, 1952, "That there is no deficiency in income tax for the taxable year 1946,

and that there is an overpayment in income tax for the taxable year 1946 in the amount of \$2,060.17 \* \* \*." This petition for review is filed pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.

The respondent on review, Olga L. Sultan, is an individual, whose mailing address is 1025 Alakea Street, Honolulu, Territory of Hawaii, and who was, during the taxable year here involved, a resident of Honolulu, Territory of Hawaii. The said taxpayer filed her Federal income tax return for the calendar year 1946, the taxable year here involved, with the Collector of Internal Revenue for the District of Hawaii.

#### Nature of Controversy

The sole question which was presented to and passed upon by The Tax Court of the United States is whether the income of a partnership in which the taxpayer's husband, Edward D. Sultan, was a general partner, and a trust created by the taxpayer's husband for the benefit of their minor son was designated as a special partner, was taxable to the taxpayer and her husband (on a community property basis), in so far as the share thereof allocable to the trust was concerned, under the doctrine of *Helvering vs. Clifford*, (1940) 309 U. S. 331.

For some time prior to August, 1941, the taxpayer's husband, Edward D. Sultan, was engaged in the wholesale jewelry or jewelry manufacturing business in the Hawaiian Islands. On August 30, 1941, a special partnership was organized in which

Edward D. Sultan, Ernest W. Sultan, Marie Hilda Cohen, and Gabriel L. Sultan were the general partners, and the trustees of the Edward D. Sultan Trust were named as special partner. Two days prior thereto, on August 28, 1941, the taxpayer's husband, Edward D. Sultan, created the Edward D. Sultan Trust for the benefit of their minor son, naming the Bishop Trust Company, Limited, and Ernest W. Sultan, as trustees, to which trust he paid the sum of \$42,000 which it was required be used to purchase a 42 per cent interest in the partnership of Edward D. Sultan Company. The taxpayer's husband then conveyed to the partnership the assets used in his jewelry business at a stated value of \$100,000 and received a 46 per cent interest in the partnership and the return to him of demand notes made by him on August 28, 1941, payable to the trustees of the Edward D. Sultan Trust in the amount of \$42,000 and to Ernest W. Sultan, Marie Hilda Cohen, and Gabriel L. Sultan, each in the amount of \$4,000.00.

Only the general partners had authority to transact partnership business and incur obligations.

In his notice of deficiency, the Commissioner held that the income of the partnership of Edward D. Sultan Company which had been returned in a fiduciary tax return filed by the Edward D. Sultan Trust for the year 1946 was taxable to the taxpayer's husband, Edward D. Sultan, settlor of the trust. One-half of such income returned by the trust was allocated to the instant taxpayer because of the Hawaii community property law. The Tax Court of

the United States disagreed with the Commissioner's determination and held that the settlor did not have sufficient control over the trust to make the income thereof taxable to him, that the trust was a bona fide partner in the partnership, and that its distributive share of partnership income for each of the years involved did not constitute income of the taxpayer and her husband.

/s/ CHARLES S. LYON,  
Assistant Attorney General,

/s/ CHARLES W. DAVIS,  
Chief Counsel, Bureau of Internal  
Revenue, Attorneys for Petitioner  
on Review.

[Endorsed]: T. C. U. S. Filed Jan. 19, 1953.

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[Title of U. S. Court of Appeals and Cause 24513.]

### STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled proceeding, by his attorneys, H. Brian Holland, Assistant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision "That there are no deficiencies in income tax for the taxable years 1944 and 1945; that there is a deficiency in income tax



for the taxable year 1946 in the amount of \$2,767.74; and that there is an overpayment in income tax for the taxable year 1944 in the amount of \$450.00, all of which was paid within two years before the filing of the claim for refund.”

2. In failing and refusing to sustain the deficiencies in tax determined by the Commissioner.

3. In holding and deciding that the trust created by the taxpayer for the benefit of his minor son was a bona fide partner in the partnership involved and that its distributive share of partnership profits was not income of the taxpayer, Edward D. Sultan.

4. In failing and refusing to hold and decide that the trust created by the taxpayer for the benefit of his minor son was not, for Federal income tax purposes, a recognizable partner in the taxpayer's business.

5. In holding and deciding that the settlor-taxpayer did not have any rights in the trust corpus or income sufficient to make the income of the trust taxable to him.

6. In failing and refusing to hold and decide that, under the doctrine of *Helvering vs. Clifford*, 309 U. S. 331, the income of the trust created by the settlor-taxpayer, Edward D. Sultan, for the alleged benefit of his minor son was taxable to the settlor-taxpayer.

7. In that its ultimate conclusion that the Edward D. Sultan Trust was a bona fide trust created for the benefit of the taxpayer's minor son and that the taxpayer did not have any substantial control over, or interest in, the corpus or income of the

trust is not supported by but is contrary to its underlying findings of fact.

8. In that its opinion and its decision are not supported by but are contrary to the Court's findings of fact.

9. In that its opinion and its decision are not supported by but are contrary to the evidence.

10. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General,  
/s/ CHARLES W. DAVIS,  
Chief Counsel, Bureau of Internal  
Revenue,  
Attorneys for Petitioner on Review.

Acknowledgment of Service attached.

[Endorsed]: T. C. U. S. Filed April 2, 1953.

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[Title of U. S. Court of Appeals and Cause 24514.]  
STATEMENT OF POINTS

Comes now the Commissioner of Internal Revenue, petitioner on review in the above-entitled proceeding, by his attorneys, H. Brian Holland, Assistant Attorney General, and Charles W. Davis, Chief Counsel, Bureau of Internal Revenue, and hereby states that he intends to rely upon the following points in this proceeding:

The Tax Court of the United States erred:

1. In entering its decision "That there is no de-

iciency in income tax for the taxable year 1946, and that there is an overpayment in income tax for the taxable year 1946 in the amount of \$2,060.17 \* \* \*.”

2. In failing and refusing to sustain the deficiency in tax determined by the Commissioner.

3. In holding and deciding that the trust created by the taxpayer's husband, Edward D. Sultan, for the benefit of their minor son was a bona fide partner in the partnership involved and that its distributive share of partnership profits was not community income of the taxpayer and her husband.

4. In failing and refusing to hold and decide that the trust created by taxpayer's husband, Edward D. Sultan, for the benefit of their minor son was not, for Federal income tax purposes, a recognizable partner in the business of the taxpayer's husband.

5. In holding and deciding that the taxpayer's husband, Edward D. Sultan, did not have any rights in the corpus of the trust created by him for the benefit of their minor son or in the income thereof sufficient to make the income of the trust taxable to him.

6. In failing and refusing to hold and decide that, under the doctrine of *Helvering vs. Clifford*, 309 U. S. 331, the income of the trust created by the taxpayer's husband, Edward D. Sultan, for the alleged benefit of their minor son constituted community income taxable to the taxpayer herein and her husband.

7. In that its ultimate conclusion that the Edward D. Sultan Trust was a bona fide trust created by the taxpayer's husband, Edward D. Sultan, for the benefit of their minor son and that the taxpayer's husband did not have any substantial control over, or interest in, the corpus or income of the trust is not supported by but is contrary to its underlying findings of fact.

8. In that its opinion and its decision are not supported by but are contrary to the Court's findings of fact.

9. In that its opinion and its decision are not supported by but are contrary to the evidence.

10. In that its opinion and its decision are contrary to law and the Commissioner's regulations.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General,

/s/ CHARLES W. DAVIS,  
Chief Counsel, Bureau of Internal  
Revenue,  
Attorneys for Petitioner on Review.

Acknowledgment of Service attached.

[Endorsed]: T. C. U. S. Filed April 2, 1953.

The Tax Court of the United States  
Washington

[Title of Tax Court and Causes Nos. 24513-4.]

CERTIFICATE

I, Victor S. Mersch, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 45, inclusive, constitute and are all of the original papers and proceedings, including original exhibits (1 through 39), attached to the stipulation of facts, on file in my office as the original and complete consolidated record in the proceedings before the Tax Court of the United States entitled: "Edward D. Sultan, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 24513" and "Olga L. Sultan, Petitioner, vs. Commissioner of Internal Revenue, Respondent, Docket No. 24514", and in which the respondent in The Tax Court has initiated appeals as above numbered and entitled, together with a true copy of the docket entries in said Tax Court proceedings, as the same appear in the official docket book in my office.

In testimony whereof, I hereunto set my hand and affix the seal of The Tax Court of the United States, at Washington, in the District of Columbia, this 6th day of April, 1953.

[Seal] /s/ VICTOR S. MERSCH,  
Clerk, The Tax Court of the  
United States.



Before the Tax Court of the United States

[Title of Causes Nos. 24513-4.]

TRANSCRIPT OF PROCEEDINGS

No. 2 Courtroom, Federal Building, Honolulu,  
T. H., June 19, 1951, 9:30 a.m. to 1:00 p.m.

Pursuant to notice, the above entitled matter  
came on to be heard.

Before: Honorable C. R. Arundell, Judge.

Appearances: Urban E. Wild, Esq., Milton Cades,  
Esq. (Smith, Wild, Beebe & Cades), Bishop Trust  
Bldg., Honolulu, T. H., appearing on behalf of Pe-  
titioners. Robert G. Harless, Esq. (Treasury De-  
partment Counsel), appearing on behalf of Respond-  
ent. [1\*] \* \* \* \* \*

EDWARD D. SULTAN

Petitioner, called as a witness in his own behalf,  
being first duly sworn, was examined and testified  
as follows:

The Clerk: State your name and address for the  
record, please.

The Witness: Edward D. Sultan, 2942 Laola  
Road, Honolulu.

Direct Examination

Q. (By Mr. Wild): Are you the Edward D.  
Sultan who is Petitioner in Docket number 24513?

A. I am.

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\* Page numbering appearing at top of page of original Re-  
porter's Transcript of Record.

(Testimony of Edward D. Sultan.)

Q. And is Olga L. Sultan who is Petitioner in Docket number 24514 your wife? A. She is.

Q. In the year 1941, Mr. Sultan, early in that year, what business were you in?

A. I was in the wholesale jewelry business here in Honolulu.

Q. Prior to that time what has been your business experience, in what lines of business?

A. I was in the wholesale jewelry business or manufacturing jewelry business practically all my life since I was ten years old.

Q. Do you profess to know any other types of businesses? [23] A. No.

Q. And what, up to that time, had been your specialty in connection with the jewelry business? Was it managing businesses or selling, or what?

A. Well, I have acted as a salesman practically since I was of age or even before that.

Q. Now when you were operating the business here as an individual, who was the manager of the business?

A. Prior to that time for some time my brother had been the manager.

Q. And what is your brother's name?

A. Ernest Walter Sultan.

Q. And he is one of the co-partners that was afterwards a co-partner with you?

A. Yes, sir.

Q. And during the time that you were operating the business as a sole proprietorship, how was he compensated?

(Testimony of Edward D. Sultan.)

A. Well, practically most of the time he received a percentage of the profits.

Q. And was that a substantial percentage?

A. Yes.

Q. And what was it in some of those early years, if you remember?      A. It was 25%.

Q. Was it almost constantly that same percentage, or——

A. Yes, it was always that. I believe when he first came [24] down it was that arrangement, and he continued on that all the time.

Q. And what were his duties as manager?

A. Well, he did practically all the business and running the office and some selling, and in the office and handling the complete management of the business.

Q. Now some time in the latter part of the year or middle of the year 1941 you considered making a change in your business, did you not?

A. Yes, we had been considering it for some time.

Q. And about when did you start in considering making a change in your business?

A. I don't know exactly what you mean by the change.

Q. Well, from a sole ownership to a partnership.

A. Well, for over a year, I imagine, for some time. It was several months before that at least.

Q. And what were your purposes in mind at that time?

(Testimony of Edward D. Sultan.)

A. Well, I wanted to see that my family were taken care of, and especially to interest my son in the business. He was on a newspaper at high school and was all out for journalism, and I wanted an Edward D. Sultan & Son business later on. I had never dictated to him or propositioned him on it. I simply wanted to influence him in a way that he would naturally follow in my footsteps. [25]

Q. How old was your son at that time?

A. Thirteen years old.

Q. What, if anything, did you do concerning that desire of yours to possibly change the business and interest your son in it?

A. Well, I consulted my brother and sisters and attorneys on the manner which would be best to form a new business.

Q. And what was the reason why you decided to set up a trust with your son as the beneficiary?

A. Well, a trust would still give him a partnership and finally obtain the interest in the business that I wanted him to have, and it would protect him and the family in case of my death or illness, and also I was impressed with the benefits that a trust could give in the way of advice and the management in a business providing I would be out of the picture, or even while I was in the picture.

Q. Well, what was your own health about that period of time when you were contemplating the formation of this trust?

A. Well, I was almost in the constant care of

(Testimony of Edward D. Sultan.)

the doctors and had been going down quite a good deal. That was one of the reasons why I wanted to do something about it very soon.

Q. And you said something about you wanted to get the benefit of a trust company in the management. Had you had knowledge of that in your own line of business before? A. Yes. [26]

Q. What was that knowledge?

A. The Joseph Schwartz Company here, a wholesale jeweler, had been in the hands of a trust company, and when they took it over I understood that it was in bad shape with a poor rating, and it developed to a good rating and a very substantial business under the management of the trust company.

Q. Was that Joseph Schwartz Company one of your competitors? A. Yes.

Q. Now, in the discussions leading up to the preparation of the deed of trust, did you consult with a counsel on that? A. Yes, indeed.

Q. And at that time what advice, if any, were you seeking?

A. Well, I wanted to know the best way of obtaining the objective I was after, and naturally I went to him to learn that way, to see what he thought.

Q. And what was that objective that you were after that you just referred to?

A. Well, I wanted to protect the family in case of illness, the wife and son, and to interest him in the business.



(Testimony of Edward D. Sultan.)

Q. Were those your only objectives at that time?

A. Yes, sir.

The Court: How would this protect the wife?

The Witness: Well, I believe that we made some provision in case of his death that she would have it, something to do with the business. It is a matter of record, I [27] believe.

The Court: All right, proceed.

Q. (By Mr. Wild): Now, at that time did you yourself say, "I want to set up something to relieve me of the burden of taxes" to your counsel?

A. No, sir.

Q. Did you have a motive of tax avoidance in mind at that time?           A. No, sir.

Q. Was that at all considered by you as a factor in determining what course you wanted to pursue?

A. I imagine it was discussed later on, but it wasn't considered by me as to the setup we would have. I wanted something that would assure the protection of the family.

Q. Now, at the precise time you had this under consideration did you have conferences with your brother Ernest, who was the manager of your business, to get his viewpoint on it?

A. Yes, many times. I took everything up with him. It wasn't really a tax problem at that time. We weren't making that kind of money.

Q. Will you explain why you say there was not a tax problem at that time?

A. Well, it was before the war, before the real activity had started here, and although our busi-

(Testimony of Edward D. Sultan.)

ness was gradually increasing, we were, for instance, placed on a quota basis [28] with our biggest supplier, a line that we had depended principally on, and that quota was less than the amount we had obtained previously from them, which meant that our volume would be cut down a great deal, and other suppliers put us on a quota basis. There was a shortage of many materials for our business, even as late as the middle of 1941.

Q. What were the outlooks for continued source of supply, to meet the demand for the products which you wholesaled at about the time you were considering the formation of the partnership?

A. Well, when we first started considering, I imagine that the supplies were fairly ample, but they became tighter all the time, and by the formation of the partnership we were still obtaining quite a little goods, but the indications later on or even then were that we would be cut down a great deal in our supplies.

Q. Now, you had besides your brother, Ernest Walter Sultan, a sister, Marie Hilda Cowen, and where was she located at that time?

A. In San Francisco.

Q. And she had anterior experience in the jewelry business? A. No.

Q. What had been her line of business?

A. Well, she and her husband run a radio business in San [29] Francisco, and they had a warehouse and a shipping department and in many cases it warehoused our goods, and previous to that my

(Testimony of Edward D. Sultan.)

brother had sold our line and during that time was selling our line on the mainland, a line of Hawaiian goods.

Q. By that brother, do you mean Ernest Walter?

A. No, the other brother, Gabe Sultan.

Q. But was it necessary at about that time to have warehousing space in San Francisco in the conduct of your business? A. Yes.

Q. And why was that, Mr. Sultan?

A. Well, sir, shipping was a very difficult thing at that time, shipping to the islands. The pre-war demand for space of necessary materials was already in effect, and we couldn't get the shipping space.

Q. In brief, that was a period when we were building up armaments and defenses here, is that right? A. Yes, sir.

Q. And shipping space was prorated for the defense endeavor, is that right?

A. I don't know if it required a priority at that time. I don't recall, but shipping was very difficult to be able to obtain. It was very difficult. And to be able to obtain goods which were on a quota basis, we bought them and sometimes warehoused them in San Francisco waiting space to the [30] islands.

Q. Now, your brother, Gabriel Louis Sultan, where was he located?

A. In San Francisco also.

Q. At that time he was there?

A. Yes.

(Testimony of Edward D. Sultan.)

The Court: He is the one you are talking about, isn't he?

The Witness: No, my sister and her husband were the ones that had the warehouse.

Q. (By Mr. Wild): And prior to that time he had acted as salesman for you, you said?

A. Yes, sir, full-time salesman on the road around California.

Q. A full-time salesman? A. Yes, sir.

Q. Now, what was the nature of your business at that time, Mr. Sultan?

A. Well, it was still associated with the jewelry business, and we imported pikake shells, which is a souvenir item here, and we remanufactured them here in the islands into necklaces, and so forth, and he sold them in the resort places in California.

Q. And were you a wholesale jeweler or what at that time?

A. Yes, sir, we carried everything in jewelry.

Q. Just describe the business for the Court.

A. Well, we bought watches and diamond goods and general jewelry lines, and silverware, practically everything associated with the jewelry business, because here we have a very complete line. We have such a small territory. We have bought and sold to other retail jewelers and other retailers who carried those goods, at a profit.

Q. Now, do you recollect a petition having been filed in court asking for authority by the trustees to accept the gift for the trust of an interest in your business in the partnership?

(Testimony of Edward D. Sultan.)

A. Yes, sir, I attended the hearing.

Q. You knew about that? A. Yes, sir.

Q. Very well. As a result of the hearing, the stipulation shows that the Court approved the investment and the deed of trust was conditioned upon that approval, and so after that then the partnership became really operative, is that right?

A. Yes, sir.

The Court: It is a trifle leading, but I guess it is all right.

Mr. Wild: Well, it is sort of hard, your Honor, when we are tied up to a lot of exhibits. I apologize. I didn't mean to be leading. [32]

The Court: That's all right. Proceed.

Q. (By Mr. Wild): Now, Mr. Sultan—

The Court: The point I was thinking about, that whole line of testimony, if there is any significance to this court action. It seems to me we ought to get something as to how that was done, whose idea was it? I can't believe it is this witness's idea, unless he knows a good deal more about law than people usually do.

Mr. Wild: No, he doesn't. He doesn't purport to. Might I just make a brief statement, your Honor? I believe that this was the first time that the issue, the question of an inter vivos trust to be handled by a corporate trustee in an active business, not as a fiduciary of a deceased's estate, but in an inter vivos trust, had come up, and that the trust company with due precaution, and I believe on advice of counsel, filed a petition, feeling it was



(Testimony of Edward D. Sultan.)

good business from a business standpoint, setting forth to the Court, and after hearing evidence there was a decree granted. Had that not been done by the provisions of the trust deed itself, as I read it, the trust would have terminated. But once that hearing had been had within the period of time and the Court had approved the action and the trust went into full effect and continued. But this witness, your Honor, he just knows about it, that's all. We don't assume that he knows the legal significance of it at all. [33]

Q. (By Mr. Wild): Now, Mr. Sultan, your brother, Ernest W. Sultan, acted as the manager of the partnership business at the outset, you have heretofore testified? A. Yes, sir.

Q. How long did that management of the business continue by him?

A. Well, he became very sick again toward the middle of 1942, and he was at such a point that he was required to leave the islands, and at that time he withdrew from his arrangement and went up to the coast, and I took over the management of the business and employed or tried to employ various office managers there, with some success at different times. Then, my brother, feeling better on the coast, opened an office for us in New York and operated that as a buyer for us where we found the necessity after the middle of 1942.

Q. So that actually at that period of time he was able to resume active duties for the partnership? A. Yes, sir.

(Testimony of Edward D. Sultan.)

Q. Within a very short period of time?

A. Yes, sir.

Q. Now, during these years of operation, take the first period ending January 31, 1942, from September, 1941, did you draw compensation for your services?      A. Yes sir. [34]

Q. And do you recollect what the amount of that was?      A. About \$1,300 a month.

Q. And was that charged as an expense before profits were computed?

A. Yes, sir.

Q. What was your brother's compensation as manager?

A. It was 25% of the net profits of the business before any division, and he received that, and I received my salary, after which we made the division of the profits on a percentage basis.

Q. Now, do you have there the amount which you received for the fiscal year ending January 31, 1943, 1944, 1945, 1946, and so forth?

A. Yes, sir.

Q. Will you please testify as to what amounts you received for personal services during those periods?

Mr. Harless: Wait a minute; what is he reading from and where did it come from?

Q. (By Mr. Wild): What are you reading from, Mr. Sultan?

A. I am reading— Here, I will read from this slip, which is the figures furnished to me by our bookkeeper.

(Testimony of Edward D. Sultan.)

Mr. Wild: I asked Mr. Sultan to have these figures and be prepared to testify to them.

Mr. Harless: All right, I just wanted to see what it was [35]

The Witness: The five-month period from September 31 should be from September 1—I think this is an error, Mr. Wild—it should be September 1, 1941. This says September 31. Yes, it should be September 1, 1941, to January 31, 1942, was \$6,500. From February 1st to January 31, 1943, was \$20,431.13. The next fiscal year was \$42,000. The next was \$42,000. The next was \$42,000 and the one starting in 1946 was \$64,000. The one starting February 1, 1947, was \$74,000 and the one starting February 1, 1948, \$64,000.

Q. (By Mr. Wild): Now, those amounts were paid to you by the partnership, Edward D. Sultan Company, for your services to the company?

A. Yes.

Q. Do you consider the amounts that were paid as ample compensation for your personal services?

A. Yes, sir.

Q. And those amounts in each instance were paid as expenses of the partnership business before any division of profits, is that correct?

A. Yes, sir.

Mr. Wild: I think I gave you a copy of Ernest's withdrawals also. [36]

Mr. Harless: Yes.

Mr. Wild: That is 9-1 instead of 9-31.

Q. (By Mr. Wild): Now, your brother, Ernest

(Testimony of Edward D. Sultan.)

W. Sultan, as manager also drew compensation during these periods. Will you state what those were?

A. Yes, sir. This was on the agreement that we had?

Q. Yes, the agreement.

A. From September 1, 1941, to January 31, 1942, \$23,000. The next fiscal year from February 1 to January 31, 1943, \$95,169.99. The fiscal year ending January 31, 1944, \$60,000. At that time his old agreement expired and his new bonus and salary were settled on each year. The following year ending January 31, 1945, \$60,000. Ending January 31, 1946, \$50,000; and ending January 31, 1947, \$15,000. He had retired and closed our New York office, I believe, in May or June of that year.

Q. And that compensation was for the period that he was operating that office? A. Yes, sir.

Q. What have you to say as to whether that was compensation adequately compensating him for personal services to the business during those periods?

A. It was very adequate.

Q. Were these items of payments in his case deducted actually before determining net profits divisible to the [37] partners?

A. Yes, both his and mine were deducted before division of the profits.

Q. Now, with the impact of December 7th and the war, were there serious changes made in your business here, Mr. Sultan?

A. Yes, sir; almost immediately after the war it looked as though we would practically have to

(Testimony of Edward D. Sultan.)

close up. We didn't know what shipping we would receive or what materials we would receive, but after a few months the velocity started of the thousands and thousands of people that were sent down here to the islands, and the fact that we had certain quotas that we were able to make, the business grew very rapidly from there on. It was because of the conditions becoming so different than they had been.

Q. Well, what would you say about the growth of your business during that period? Was it one that you had expected theretofore?

A. As I say, right after the war, immediately after the war we thought we would be out of business, so the growth of the business during 1942 and especially 1943 and I believe 1944 was our biggest year, were entirely unexpected at that time.

Q. Will you tell us something about your buying problems at that time?

A. Well, because of the buying problems I urged my brother to open the office in New York, which he did. I believe it was in the summer, August or September of 1942. We had a good rating and we wanted to keep it, and we paid our bills the minute any shipments were made to us, which eased our buying problem somewhat, but we were constantly back at the factories trying to obtain commitments for goods to us.

Q. Well, will you kindly explain that? What was the method then that was commenced in acquiring stock from the factories?



(Testimony of Edward D. Sultan.)

A. Well, we would go back to the factories, which was almost necessary, and place our orders, and they shipped—the shipments were made direct to Honolulu and invoices were sent to our New York office. We established an account in New York and kept our money there, and my brother paid for these goods the day the invoice arrived from the factory to our New York office, the duplicate invoice, and in 99% of the times it was paid on the day we received the invoice, in order to have the factories be favorable toward us in giving us more merchandise, which we needed badly.

Q. Now, how long would it be before you would get the merchandise that you purchased? Would that come through normally rapidly, or would it be delayed?

A. Well, it depended upon priorities that we would have here. If they were a large amount of goods and we would receive a very small priority the goods, especially freight, they would lay in San Francisco waiting until we got the [39] proper priority or until the priority we had would bring them to the islands. If they were parcel post, we were restricted to eleven pounds a week from any one shipper, which was the law here at the time, to any one consignee, and in many cases an order of boxed jewelry or something else would take three, four or five months for the factory to be able to fill that order, but they would bill us for it the minute the shipment was ready and we would pay for it, and

(Testimony of Edward D. Sultan.)

that would take care of the eleven pounds a week coming to us, unless we were able to get a priority, which was unusual in our business.

Q. Now, in connection with that development in your business, did you do anything about getting these other partners to agree to leave a part of their earnings in the partnership business?

A. Well, we always left our earnings in there until we needed them because we needed the money in the business and we needed to keep large cash deposits in New York to pay for anything that we could possibly get immediately, and except for the trust partner, why we would leave our money in the business for some time until profits and collections on the new year had caught up with us, so that we could pay our taxes and profits.

The Court: What about these big salaries? Did you draw those out of the business? [40]

The Witness: No, sir; they were credited, I believe. I believe I drew \$2,400 a month, and my brother had a drawing account. He drew what he wanted.

The Court: I mean did you take this \$2,400 a month out of the business?

The Witness: Yes, sir, it was taken out of the business and credited to my personal account, I believe, and the bonuses over the \$2,400 a month were paid to me as soon as we had ample funds, which usually was several months after the next year. I believe our bookkeeper took care of the

(Testimony of Edward D. Sultan.)

income tax, which was a great portion of what my earnings were.

Q. (By Mr. Wild): Now Mr. Sultan, in about sometime the end of 1948 or early 1949 there had been radical changes in the business, had there not?

A. Yes, sir.

Q. Will you describe those for the Court, the conditions and what had happened?

A. In the fall of 1948 we had a very serious strike here. Our volume dropped considerably and our collections became very slow, and it was a very unhappy period, as far as I remember.

Q. Well, what happened as a result of that?

A. Well, we just simply—our business declined a great deal. [41]

Q. At that period of time did you consider re-organizing the business, terminating the special partnership and doing anything about that situation?

A. Yes, I was in constant touch with my brother, and I had a very unfortunate experience in the jewelry business before that, and I knew that our accounts would slow up a great deal, and that in order to continue I would have to have more money in the business, and consequently my brother and sister were very happy to sell out, as well as the trust company, and so we re-established the business.

The Court: I don't quite follow that. You say that the business needed more money?

The Witness: Yes, sir.

(Testimony of Edward D. Sultan.)

The Court: And what you do, as I get it, is you buy out some partners, which doesn't give the business more money but takes money from the business.

The Witness: I had been continually loaning the business large sums of money myself, without interest in fact, and we were under-capitalized. We were capitalized for \$100,000 where we needed at least a quarter of a million dollars or one-third of a million dollars in the business. The trust company had insisted on their money. In fact, many times they would call me and say, "When are you going to send us our check, and where is our statement", and what not, and so we paid them off as promptly as we possibly [42] could, which the books will show, and we didn't have enough money to continue by paying off the profits that way. So we were under-capitalized three to one.

The Court: I understand that, but I don't understand how what you did gives more capital to the business. You say you bought out your brother and sister and you buy out the interest of the trust. Now that doesn't give you more money.

The Witness: We took in more money from my son than we had paid out to the trust company, a substantial amount more, and also a substantial amount from Mrs. Sultan, and I also put in more money, so we recapitalized for a quarter of a million dollars instead of \$100,000.

The Court: All right, go ahead.

(Testimony of Edward D. Sultan.)

Mr. Wild: I was just going into that with him, your Honor.

The Court: All right.

Q. (By Mr. Wild): In the changed years with the strike and all that, had that affected the rapidity of collections in your business? A. Yes, sir.

Q. And what had that effect been?

A. Well, the collections had slowed up a great deal, which is a matter of record on our books. Our turnover had dropped considerably. [43]

Q. And prior to this time had your son become interested in the business? A. Yes, sir.

Q. What had been the courses which he had pursued in school?

A. Well, originally, even up to college, when he started at Stanford, he started with a journalistic course. He came down here and worked the first summer during his vacation and worked for us, started in the bookkeeping and the shipping room and became very interested. He changed his course to business administration and continued on in that, and graduated in the business administration course, and each summer he came down and worked in the office.

Q. And did he desire then to participate in the active management of the business?

A. Yes, sir.

Q. And was that one of the things you had in mind when you desired to buy out your brothers and sister and buy out the trust interest in the business and add more capital to it?



(Testimony of Edward D. Sultan.)

A. Yes, I always had in mind that I wanted him in the business as a partner of mine.

Q. And actually did that occur?

A. Yes, sir.

Q. Was this extra capital put in the business?

A. Yes, sir.

Q. You did that even though you felt conditions were bad [44] at that time? A. Yes.

Q. Why was that?

A. Well, I don't know, I wouldn't know which way to turn except the jewelry business, and when conditions are fairly good it is a good business. I wanted to continue it and to continue it so my son would continue after me.

Q. In short that is the only business you know, is that right? A. Yes, sir.

Q. And you felt the time had come for more capital? A. It was very necessary.

Q. How long did your son actively then engage with you in the business?

A. He graduated from college, I believe, in June, 1949, and I believe he started to work in the office in July 1st, 1949. And he had three summers, I believe, in the office and started out as I had started as a fairly young boy out selling and becoming acquainted with the trade. He knows every jeweler in the Hawaiian Islands, and he is associated with me, and it is understood by everyone that he is going to be in the jewelry business and take over my business.

Q. Where is he now?

(Testimony of Edward D. Sultan.)

A. He is in the United States Army, Fort Ord, California, leadership school. [45]

Q. How long has he been there?

A. Six to seven months. He has been in the army six to seven months, at Fort Ord about four months or three months.

Q. Was that because he was dissatisfied with the jewelry business?

A. No, sir; he was inducted into the army.

Q. Do you know what his present aims are?

A. His present aims are that he wants to be in the jewelry business back in Honolulu.

Q. Now, Mr. Sultan, during the period of time that you had a special partner that was the trust and your brother and Bishop Trust Company as trustees, did you consult at all with them as trustees concerning business policies?

A. Yes, sir.

Q. And with whom did your consultations take place in the trust company, for instance?

A. Well, Mr. White, and later Mr. Benner.

Q. And by Mr. Benner you mean Mr. Edwin Benner, Jr.?

A. Yes, sir

Q. How long have you known Mr. Benner, Mr. Sultan?

A. I think about since the trust was established.

Q. Did you furnish them regularly with accounts of the conduct of the business?

A. Yes, sir.

Q. And how often were those accounts furnished? [46]

(Testimony of Edward D. Sultan.)

A. We furnished them an annual auditor's statement every year, gave them one for their records. We turned it over as soon as the auditor furnished us with it.

Q. And did you give them interim accounts?

A. Only by discussion, I believe. I don't believe we had interim accounts.

Q. Did they confer with you over the course of your business, what was happening there?

A. Yes, they did. We were becoming more successful all the time, and they were quite satisfied. We weren't in there terribly often because everything was going so beautifully in a business way.

Q. The other co-trustee, your brother, was then actively engaged in New York?      A. Yes, sir.

Q. Handling the buying?

A. Yes, and I spent sometime in New York each year also helping him. That was a big part of our work there. I conferred with him constantly on everything.

Q. During the period of your son's minority up to the time that he arrived at the age of twenty-one, who supported your son and wife?

A. I did.

Q. Out of what moneys?

A. Out of my own money. [47]

Q. Did you or did you not receive any moneys from the trust?      A. No, sir.

Q. For their support?

A. None at all.

Mr. Wild: No further direct.

(Testimony of Edward D. Sultan.)

Mr. Harless: If the Court please, I wonder if we could ask for a recess now, and we will get these returns fixed up.

The Court: Very well, we will take a brief recess.

(Recess.)

Mr. Wild: Might I ask the indulgence of the Court and counsel to ask one or two additional questions?

The Court: Very well.

Q. (By Mr. Wild): Mr. Sultan, at the time of the partnership being formed in 1941, did you then execute a will naming a fiduciary?

A. Yes, sir.

Q. And who was the trust company named as the fiduciary in the will, Bishop Trust Company, Limited?

A. They, with my brother Ernest.

Q. A little while ago in response to a question asked by the Court as to how the trust protected your widow, you said she was an alternate beneficiary with your son in the event of his death. Did you also have any other thing in [48] mind as protecting your wife?

A. Well, except that I wanted to have the executors acquainted with the business so it could continue and protect her in that way, and if anything happened to my brother, why the Bishop Trust Company have been familiar with my business and along with the help of our office could run it and protect her in that way.

(Testimony of Edward D. Sultan.)

Q. You say protect her. Was she a beneficiary? Would she have been a beneficiary under your will had you died and she outlived you?

A. Yes, sir.

Mr. Wild: No further questions.

### Cross-Examination

Q. (By Mr. Harless): Mr. Sultan, isn't it a fact that on or about August 28, 1941, you executed certain notes to your brother Ernest, your brother Gabriel and your sister Marie and the Bishop Trust Company and Ernest as trustees for your son?

A. Yes, sir.

Q. Did you actually prepare those notes?

A. Yes.

Q. Did you deliver them to the persons named in there as the payee?

A. I believe so, yes.

Q. Did you deliver those notes on condition that they be [49] returned to you in the purchase of an interest in a partnership either then created or to be created?

A. I don't remember if that was one of the conditions or not.

Q. Why did you give the notes?

A. Well, I didn't have the cash on hand, I guess. I didn't want to take it right out of the business at that time.

Q. Isn't it a fact that you did give these notes for the purpose of permitting these people to in-



(Testimony of Edward D. Sultan.)

vest the notes back in the partnership? You gave the notes instead of cash?

A. My primary reason with my son was definitely I wanted him in the partnership, and I wanted—Yes, I imagine the answer is yes to that question. I wanted all of them in the partnership.

Q. Why did you give notes to your sister Marie Cowen and your brother Gabriel? Why did you want them in the partnership?

A. Both of them had been associated with the business, and I wanted them. My sister is a capable business woman. My brother had been associated in the business before too, and if we could keep them that way it would give added protection to the business.

Q. How was Marie Cowen associated with the business prior to the formation of the partnership? [50]

A. Well, we handled shipments from San Francisco, I believe, and stored stuff in her husband's warehouse.

Q. She was in the radio business, wasn't she?

A. Yes.

Q. You weren't in the radio business?

A. Yes, sir.

Q. I believe you testified on direct that Mr. Gabriel Sultan was a mainland salesman for your firm.

A. Yes, sir.

Q. Was that true prior to the formation of the partnership in 1941?

A. Yes, sir.

Q. That continued after that time?

(Testimony of Edward D. Sultan.)

A. It was eliminated because we couldn't get the supplies to furnish him and we did not need to sell it up there.

Q. He no longer performed any service for the partnership or was not employed by the partnership, is that right?

A. No, sir.

Q. Then this partnership interest to your brother Gabriel and the accumulations thereon amounted to either a pure gift or some recognition for services rendered in the past to you, is that correct?

A. Well, the intent that was entirely different. The circumstances brought that about, yes, brought about the fact that his investment in our business paid him [51] substantial dividends.

Q. What was his investment, your note, isn't that right?

A. Well, that was an investment. It was satisfactory to the government before.

The Court: I don't get that answer. Read it, please.

(The answer was read by the reporter.)

The Court: I don't understand that answer.

The Witness: At the time they originally questioned the trust they questioned Ernest, Gabe and Marie's investment also, and at the local Internal Revenue Mr. Peterson was satisfied to eliminate any claim on their profits.

Q. (By Mr. Harless): I am not arguing about that, Mr. Sultan. All I want to know is just what it was your brother and sister put into this thing,

(Testimony of Edward D. Sultan.)

or what was the reason for the note you gave them. What was the consideration?

A. The first consideration was to have them interested in the business.

Q. Why? They weren't going to contribute any thing to it? A. They both had functions?

Q. Were they to function after the partnership started?

A. Yes, they were to function depending on conditions.

Q. Now as far as the note to the trust is concerned, that again was a gift, is that correct? [52]

A. Yes.

Q. There was no money involved?

A. Well, I gave a note that is worth \$42,000.

Q. But you gave the note contingent upon the trust purchasing an interest in this alleged partnership, didn't you?

A. That was discussed and brought about in that way, yes.

Q. Discussed with whom?

A. With my advisors, the attorney, and so forth.

Q. Who were your attorneys?

A. My attorney? Mr. Cades.

Q. Did they advise you to do it that way?

A. I believe so, yes.

Q. Did they advise you to set up this trust and put it into a partnership?

A. Well, it came about after a lot of discussions. I have a cousin in Philadelphia whose advice I take a great deal. He discussed it with me. I have

(Testimony of Edward D. Sultan.)

discussed it with my brother, with my wife, and it came about over a long expanse of time.

Q. Who finally determined that it should take the form that it ultimately did take?

A. It was determined at meetings.

Q. By whom?

A. I really can't say. [53]

Q. You were there, weren't you?

A. Yes. It was determined by mutual consent.

Q. Of whom?

A. Of myself, the attorneys and my brother and everybody else concerned.

Q. Prior to the formation of the partnership, what interest did your brother have in your business?

The Court: Which brother? Let's get them straight.

Q. Brother Ernest.

A. No financial interest.

Q. He had no financial interest?

A. Yes.

Q. He was an employee, was he not, on a bonus arrangement?

A. Yes, sir. He was the backbone of the business, very valuable to the business. His knowledge was far, I believe, above mine.

Q. He was still an employee, was he not?

A. Yes, on a profit participating basis.

Q. And isn't it a fact that after the formation of the partnership Ernest Sultan's relationship to the business remained almost the same, both as to

(Testimony of Edward D. Sultan.)

compensation and activity, up to the time he became ill? He still got 25% of the net profit?

A. Yes.

Q. He still participated and managed, isn't that right? [54]

A. Yes, sir, he managed it.

Q. Was there any discussion between yourself, your brother Ernest, your brother Gabriel, your sister Marie and the trust company as to Ernest's place in this arrangement? A. There was.

Q. In which he continued to get 25%?

A. Yes, it was always assumed he would continue on that basis.

Q. Was your brother Ernest willing to participate in this arrangement if he didn't get the 25%?

A. Well, I don't know. I never tried to chisel him down.

Q. It wasn't a matter of chiseling. Were there any discussions that that was his share?

A. You tell a man you are going to give him so much, and after he has worked for awhile you say, "I am cutting you down", he should accept it? I don't know.

Q. Did you tell him his treatment would be the same under the partnership as it had been theretofore?

A. Yes, except that he would get the benefit of his profits on the partnership.

Q. What was his interest in the partnership?

A. Four percent.

Q. Now you testified that your reason for set-



(Testimony of Edward D. Sultan.)

ting up a trust for your son and conditioned its further existence upon its coming into the partnership was for the purpose of interesting a thirteen year old boy in the business?

A. Yes, sir.

Q. Is that correct?           A. Yes.

Q. What, at the time you created the partnership, did you think that either your son or the trustee of the trust could contribute to your business?

A. The trustee, the Bishop Trust Company?

Q. The Bishop Trust Company and Ernest Sultan?

A. I was sure that Ernest Sultan could participate if he was well, and he can handle the business until my son became of age. The trust company, I wanted to have them familiar with it because I know they have run many businesses here in the islands, and they certainly can take over. They couldn't take over our business without experience in it.

Q. Now was Ernest Sultan interested on his account as a co-trustee or because he had a very substantial interest as an individual? Was he rendering his time on his own account or as a co-trustee?

A. Rendering what?

Q. His time to the business, his efforts, his work?

A. He was rendering his time as an employee of the firm, I imagine. [56]

Q. As a partner?

A. As a partner, yes, sir.

(Testimony of Edward D. Sultan.)

Q. How great, or do you know how much interest—

A. He had also his interest as a co-trustee and was kept informed in that way.

Q. Do you know how you could separate his activities between his individual concern and his interest as a co-trustee?

A. No, I don't. I know he was 100% for both, and sincere.

Q. Do you know how often he conferred with the other trustee, the Bishop Trust Company relative to your policies in the business?

A. Well, up to June, 1942, which was almost a year, I know he was over there very often.

Q. Did he receive any compensation as a co-trustee?

A. No, sir; I don't believe so.

Q. You testified regarding the managership of the business prior to the creation of the partnership, and I believe you stated that your brother Ernest had been very active in managing that business while it was a sole proprietorship, is that correct?

A. That is correct.

Q. At that time what were you doing in the business?

A. I was out selling generally most of the time.

Q. On the mainland or here? [57]

A. I covered the Far East and here. I covered the outside islands.

Q. Did he too take trips?

(Testimony of Edward D. Sultan.)

A. Yes. The business was small enough so that both of us did some selling.

Q. You divided the responsibilities of management then?

A. No, sir. Yes, I was consulted all the time, but he ran the business. He was in the office most of the time.

Q. It was still your business so that you had the right to veto things he did, or approve them, is that correct?

A. Yes, certainly.

Mr. Wild: Might I ask what period of time that last question referred to?

Mr. Harless: Prior to the formation.

Q. (By Mr. Harless): After the formation of the partnership, Mr. Sultan, Ernest continued to be most active in managing the business up until the time of his illness, is that correct?

A. Yes.

Q. Were you outside selling at that point too?

A. Yes, practically all the time.

Q. Was he also doing a considerable amount of traveling?

A. No, he didn't travel at all after—In fact, the last year, since 1940, he didn't travel after his first illness. [58]

Q. He had been ill?

A. Yes, in 1940 he was very seriously ill here in Honolulu, while I was away on a trip.

Q. Who managed the business while he was ill?

A. He managed the business.

Q. While he was sick?

(Testimony of Edward D. Sultan.)

A. While he was sick. He was away from the office a few weeks, and it continued to function. I was away also. I didn't know about it until my return.

Q. Now after the formation of the partnership in August, 1941, you had a 46% interest in that business, is that correct?      A. Yes, sir.

Q. And as such you are described in the partnership instrument as the majority general partner in interest, is that correct?      A. Yes, sir.

Q. Isn't it true that the provisions in the partnership agreement give you complete control of the partnership business?

A. Well, I don't know how complete control I have. I never took complete control.

Q. You could have exercised it.

Mr. Wild: May it please the Court, I think that calls for an opinion of a legal expert, and we haven't [59] qualified this witness as such.

Mr. Harless: It is his partnership agreement. He ought to know what he can do under it.

The Court: Well, I don't think it is too important, but I think I will overrule the objection. Answer if you can; if you can't answer, just say you don't know.

The Witness: I really don't know 100%.

The Court: All right.

Q. (By Mr. Harless): Have you ever read that partnership agreement?      A. Yes.

Q. When was the most recent reading?

A. It has been quite sometime.

(Testimony of Edward D. Sultan.)

Q. Did any of the other partners have a right to terminate the partnership?

A. Yes, all of them did, I believe.

Q. How could that be done?

A. Well, the end of the first—They could terminate it practically any time after the first period of about a year, a little over a year, and then we made an amendment, I believe, so that it would have to be determined in case of the death of one of the partners or desire to terminate, why it would run until the end of the fiscal year.

Q. But weren't there certain options left to you, Mr. Sultan, to purchase the interest and keep the business going? [60]

A. I am pretty sure it was, yes.

Q. Were those same options given to any other partners in this business?

A. I don't think so.

Q. What happened to the business in case you died?

A. My portion of the business went to my estate, and the Bishop Trust Company as executor to my wife's will would continue to operate the business, as I understood it.

Q. Didn't your personal representative, on your death, have an option to determine whether or not to continue your interest in the business or not?

A. I don't know. I don't think he did.

The Court: You mean given by the instrument or just as a matter of law?



(Testimony of Edward D. Sultan.)

Mr. Harless: No, it is by the instrument, your Honor.

Q. (By Mr. Harless): Were the partners entitled to withdraw their profits from the business at will?

A. I don't know about the co-partners. I believe they were. I know the Bishop Trust Company were the toughest collectors we had.

Q. Was the special partner entitled to draw any profits from this business? A. Yes, sir.

Q. Entitled to, I say, entitled to draw any profits from [61] this business without your consent?

A. I don't know. I didn't think so.

Q. Isn't it a fact that the Bishop Trust Company, as co-trustee, wrote a number of letters to the alleged partnership asking for funds so that they could pay the taxes?

A. I don't remember that. I know we paid them off before anyone else was paid off, and in some cases we had to wait until certain commissions came in to do it.

Q. It took some time on occasion?

A. Very seldom any time. It was paid off except for a short period where we made an agreement to leave them in for a little over a year, to leave an equal amount as their original investment in the business as part of their profits. Outside of that they were paid off in cash two months to four or five months. Practically always when the auditors furnished us with his report.

Q. Now getting back for a moment to the mat-

(Testimony of Edward D. Sultan.)

ter of the preparation of the partnership agreements and the discussions which you testified you had with any number of persons, isn't it a fact that the partnership and the trust documents were prepared by your present counsel in this proceeding?

A. Yes, sir.

Q. And isn't it a fact that the documents, the trust document and the special partnership agreement, together [62] with the amendments, the entire arrangement was suggested by your present counsel?

A. Not suggested. During our discussions he certainly was in accord with it.

Q. Now who did suggest that you have a trust, did you?

A. As I said before, there was many discussions on the thing.

Q. Who finally came up with the idea that you would set up a trust and have it take a partnership interest? That is quite a complex arrangement.

A. I don't know if it originated in the East, with this attorney cousin of mine or not, or it might have originated here. I wanted some manner of protecting my son and family and I didn't want him to receive the money while he was too young to be able to take care of it. That is the reason the trust runs up to the time he is thirty years old.

Q. How was all of this going to protect your son?

A. Well, if I died and his mother died, he would have all this money, and when he was twenty-one years old it would be all his.

(Testimony of Edward D. Sultan.)

Q. Thirty years old, isn't it?

A. No, you asked me how it would protect without the instrument, I thought you meant.

Q. No, with the instrument. How would the trust protect [63] your son then?

A. Because when he is twenty-one years old he is only entitled to draw \$300 a month.

Q. That is correct.

A. When he is twenty-five, I believe he receives \$10,000. When he is thirty years old either there is some annuity clause in there or else the trust is terminated.

Q. If you decided to terminate the partnership, then what happened?

A. The money from the partnership goes into the trust and it carries on exactly the way I had planned it.

Q. But it would have to find itself another highly lucrative investment, wouldn't it?

A. Not necessarily. Certainly the profits of it were not invested in lucrative investments.

Q. There wouldn't be any profit.

Mr. Wild: I didn't understand that. You mean that they weren't invested in good investments?

The Witness: No, I misunderstood his question. I thought he was talking about if there was no partnership, and I was trying to show that even though there was money, it was invested in safe investments for the trust.

Q. (By Mr. Harless): Now at the time that the partnership was set up you have testified that there

(Testimony of Edward D. Sultan.)

was no discussion of any tax saving to you, is that correct? [64]

A. When the original discussions of the trust were had definitely there were no discussions of taxes. Taxes might have entered into it in some way.

Q. You think likely they came in somewhere along the line?

A. The form of which I don't remember. The taxes weren't a problem to us until 1942 when the business grew.

Q. You testified before, I believe, that at that point taxes weren't a very great problem. How much taxes did you pay on your 1941 and 1942 income?

A. I have to look at the tax returns.

Q. You don't remember?

A. No, I don't remember.

Q. Do you remember that when you sold the partnership your personal business that along with it went the liability for some \$37,000 worth of your personal income tax for 1940 and 1941?

A. I didn't quite understand.

Q. Do you recall that when you sold the partnership your business that along with the assets and liabilities went a liability for your personal income tax for 1940 and 1941 in the sum of some \$37,000, do you recall that, and the partnership paid it?

A. No, I don't recall it.

Q. You don't have any recollection?

A. I know that I left all my money in there,

(Testimony of Edward D. Sultan.)

and we paid [65] my taxes out of the business, out of my drawing account in the business.

Q. Those were your prior years' taxes?

A. Yes.

Q. In connection with the management of the business, when you were here in Honolulu, and perhaps even when you were elsewhere after the formation of the partnership, did you and Ernest discuss the business policies very extensively?

A. I always had.

Q. Did you discuss the business policies with your sister, Marie and your brother Gabriel?

A. Yes, we discussed them.

Q. Where?

A. In San Francisco.

Q. How often were you in San Francisco?

A. Three or four times a year, may have been more often. My brother was there many times.

Q. What was the extent of the discussions?

A. Well, probably to tell them what we had planned. They were very happy with their investment, and they didn't try to dictate.

Q. Did you and Ernest disagree on business policies after the formation of the trust at all?

A. I usually followed Ernest's dictates. I had a great deal of confidence in his managing ability.

Q. In the instances where you did not follow his dictates, what happened then?

A. I don't recall.

Q. Who prevailed?



(Testimony of Edward D. Sultan.)

A. I don't recall any such instances. We were very agreeable.

Q. You didn't find it necessary to take any vote among the general partners over a particular policy matter then in the business, is that correct?

A. No, we questioned them, I imagine, on policy. I can't think of any particular one that we questioned. Very few arose except the case of being able to buy merchandise for the islands.

Q. Was there any particular discussion about changes of salary for yourself and/or Ernest?

A. Yes.

Q. Was that ironed out?

A. Yes, that was discussed with Ernest, principally.

Q. Was it discussed at all with the other general partners?

A. Yes, and the Bishop Trust Company was informed of it, and they were agreeable to it.

Q. If they hadn't been agreeable, what then?

A. I don't know what we would have done, probably changed it.

Q. They really had no right to agree or disagree under the instrument, did they? [67]

A. They also were very happy with their investment and were very agreeable.

Q. To return for just a moment to the aid that you hoped this trust would give to your son, I should like to know why the instrument provides in effect that at age thirty your son shall receive the corpus and accumulated income of the trust and it shall

(Testimony of Edward D. Sultan.)

terminate, but if he should die sooner, then the proceeds go to his mother, your wife, and if she is no longer married to you, or if she has since deceased, it shall go to your sister Marie and your brother Gabriel and I believe your brother Ernest. Didn't you think that your son might get married at age twenty-one and have a family of his own that had to be provided for, or were you ignoring that possibility?

A. He had \$300 a month. At the time we made up the trust there was very little money involved.

Q. And he was thirteen years old.

A. And he was thirteen, and he was a very brilliant boy, which he proved in high school, as graduating cum laude, and at thirteen he was on the school paper, and a boy that I had—not because he is my son—but I had a lot of confidence in him.

Q. Well, that's fine, but nevertheless isn't that provision, or wasn't that provision with respect to the trust income in the event of your son's death before thirty [68] designed to keep the interest in that business within your family?

A. No, sir. The sole reason in my mind was to not have him have a lot of money when he was too young to really have some experience in being able to handle it.

Q. He wouldn't have had a lot. Perhaps you misunderstand.

A. To me at the time when I made up the trust it was a lot of money. It was all I had.

Q. What I am getting at is this, in the event

(Testimony of Edward D. Sultan.)

that your son died before thirty, and I may say that the trust does terminate when he becomes thirty, isn't that correct?

A. Yes, I understand that.

Q. If he should die before that, then the trust income and the corpus goes to Mrs. Sultan, and under certain contingencies it might even go to your sister and brothers. Now didn't you anticipate that probably your son could have married and had a family and then died and still be before thirty? His death would leave his family practically destitute.

A. No, sir, it didn't enter into my mind at all.

Q. That was not anticipated? A. No.

Q. It was not a matter of trying to keep it in your family?

A. No, I don't remember it entering into the thing. [69]

Q. It just wasn't anticipated?

A. This is the first time I have given it any thought. There might be something there to handle it, but I can't recall right now.

Q. Who determined the amount of your salary?

A. My brother and myself discussed it. His salary was almost fixed, and it was determined between us and suggested to the trust company and our partners, who agreed to it.

Q. How long were you in the jewelry business, Mr. Sultan?

A. I started in when I was ten years old, and outside of a matter of six years, I have been in it all my life, or eight years.

(Testimony of Edward D. Sultan.)

Q. It is a rather complex business, isn't it?

A. Yes, it can be very complex, except that there are men in it that are successful that have been in for one or two or three years. It is a merchandising business.

Q. It is a merchandising, and it takes a salesman's touch or a merchandiser's touch and sense if you want to put it that way.

A. With a knowledge of the business, yes.

Q. You testified on direct that you had heard that another jewelry business here in town had a trust as a partner, and I believe you testified that you understood that was the Bishop Trust Company.

A. No, sir.

Q. Are you still under that understanding?

Mr. Wild: We object to that, if your Honor please, as a complete misstatement of the evidence. The evidence given on direct by this witness was that on the death that a trust company had taken over the management of one of his competitors and had finally pulled them out of a hole. They did it as the executor.

Q. (By Mr. Harless): What was the trust company that did that?

A. The Hawaiian Trust Company.

Q. When did your brother Ernest become ill in 1942?

A. In the spring, I believe.

Q. And how long did that situation continue.

A. Several weeks.

Q. Several weeks only?

A. Yes.

Q. A very short time?

(Testimony of Edward D. Sultan.)

A. No, to the extent that he had a very severe heart attack and almost died. He was in the care of two very prominent doctors here in Honolulu, Dr. Nils Larson, and Dr. Pinkerton, and when he straightened out he came back in the office, and that was the time we terminated his arrangement. He suggested he leave for the mainland, and I also felt that he should not have the responsibility of running the business. When he got up in the mainland, he felt better, within two or three or four months he felt that he would be able to handle the buying office in New York, which he did.

Q. And he went on to New York.

A. And at that time it developed that we needed such an organization.

Q. From the date of his recovery in 1942, did he remain in New York most of the time then, in the New York office?

A. Well, he had help in the New York office, and he made very frequent trips to Providence, Rhode Island, which is the jewelry manufacturing center, and to Los Angeles, where a lot of goods are bought, to San Francisco, where certain factory representatives were located, who we knew personally and who had been able to get us goods from responsible factories.

Q. But whose place of operation was Honolulu?

A. What?

Q. Who was in Honolulu? A. I was.

Q. Did you travel extensively too?

A. No, I made about one trip a year to the



(Testimony of Edward D. Sultan.)

States when I was able to get a priority to travel, and then helped with the buying, which was the important thing, and then came back here, and we had employed office managers all the time, some of them satisfactory and some of them not so satisfactory. [72]

Q. After the partnership articles were amended in 1942, that was about the time your brother recovered from his illness, what was the new arrangement as to his bonuses or salary?

A. I thought they were amended at his illness, not after.

Q. After, I said when he recovered?

A. They weren't amended after, to my knowledge.

Q. They were amended in June, 1942.

A. That was when he became ill.

Q. That is what I thought. Now, what was the arrangement?

A. At that time he was going to retire and take care of his health.

Q. And did he retire?

A. No. He did retire for a month or two and was under a doctor's care.

The Court: I think we have been into that, Mr. Harless.

Mr. Harless: That's right, your Honor.

Q. (By Mr. Harless): What was the salary arrangement he had then after he started to work the New York office?

(Testimony of Edward D. Sultan.)

A. When he started to work we were going back on the 25% again.

Q. And did you?

A. No, we decided on a bonus depending upon the year's profits. [73]

Q. What type of a bonus percentage?

A. So that he would draw practically the same as I did.

Q. Well, what per cent bonus was that of the year's profit?

A. I don't recall. It wasn't exactly a per cent; it was a flat figure.

Q. Do you remember what the flat figure was?

A. I have the figures.

Q. Well, I have the figures here, too, but it doesn't represent any percentage of an amount to be determined, does it?

A. No, it was determined when we saw how business was for the year.

Q. And who determined that, you and Ernest?

A. Ernest and I, with the consent of the partners.

Q. How was the consent of the partners obtained, by mail?

A. I was passing through San Francisco, and so was Ernest very often, and by mail also I imagine. We were in very close touch with our whole family.

Q. Now, with respect to the matter of your liquidating this partnership by offering to purchase the interests of the other persons, or the liquida-

(Testimony of Edward D. Sultan.)

tion of the partnership, it is stipulated, or there are exhibits attached to the stipulation which recite an offer on your part to purchase the 42% interest allegedly owned by the trust, and I believe you testified that you purchased the interests of your two [74] brothers and your sister as of January 31, 1949, is that correct?

A. Yes, sir, I think so.

Q. The purchase amount was the amount shown on the books as their capital investment plus their undistributed profits, is that correct?

A. That is my understanding.

Q. Where did the cash that was used come from?

A. From me, because the business owed me more than that, and Mrs. Sultan invested, I think, \$60,000 of her own money.

Q. How much did you invest?

A. And I invested \$60,000 more than I had, I think \$127,500 against \$46,000.

Q. And you actually had that cash?

A. And also the Bishop Trust Company, or my son rather, gave us \$62,500.

Q. You actually had cash then to pay off the balances to your other partners?

A. Yes, sir. It might have been handled as a bookkeeping method. It might have been handled through my own account. I don't recall.

Q. Did all of the partners, both general and special, make additional capital contributions subsequent to 1941?

A. In the way of an agreement. I don't remem-

(Testimony of Edward D. Sultan.)

ber what year it was, but I think it was 1943 or 1944, where we needed capital in the business, and also wanted to as was explained. The Dunns, when I contacted them in San Francisco, advised me that the profits that were riding in our business and owed to the partners were considered a liability, and as they were almost up to what our net worth was in the business, we would have had a very bad financial rating, and it was talked over with the Bishop Trust Company and our accountant and my brother and everybody, and we finally contacted the Dunns, or they had told me in San Francisco that if that profit was tied up in the business, then the rating would change and we had a first-class rating, a fairly good rating, and that is what we did. We made an agreement to keep an equal amount as the original investment, making a total investment of \$200,000 in the business. So they added \$4,000 apiece.

Q. There was no cash contributed by anybody though, was there?

A. No, that was cash, undistributed profits.

Q. Isn't the net effect of that transaction that a book entry was made transferring amounts from advances due partners over into the capital account?

A. No, I don't know how that was handled.

Q. No cash came to you, did it? You just didn't withdraw a certain amount of your distribution for awhile?

A. The firm owed me the cash. I very seldom had any [76] cash except for my drawing account

(Testimony of Edward D. Sultan.)

of \$2,000 a month or whatever I was drawing at different times, and that is the only cash I had on hand. The rest of it was left in the business to strengthen our business.

Q. In any event, this new capital contribution was not new money coming into your business, was it?      A. Yes, it was.

Q. It was money made available through book-keeping practices?

The Court: It depends upon the way you look at it. I think we have it clear. It was earnings left in undistributed.

The Witness: That's right.

Q. (By Mr. Harless): Now, in 1949 you testified that there was a radical change in business conditions due to a strike, is that right?

A. It was due to the strike and due to the fact that in 1948, I think it was 1948 in the fall, the services whom we had been selling large amounts had passed a ruling that they couldn't buy from Honolulu, and also our Guam business, which was very substantial, was almost entirely cut off, or 60% or 80% cut off, and the mainland wholesalers who compete with us here came down about that period and offered as long as I think eight and ten months terms to jewelers to buy volume, and in many cases we had to meet those terms. Yes. [77]

Q. Now, you testified I believe on direct examination that the business needed more money in 1949.      A. The fall of 1948.



(Testimony of Edward D. Sultan.)

Q. And then you testified that you bought out the other partners.

A. The other partners' interest in the business was minor and they weren't interested in— They had seen me make an assignment in the jewelry business in 1932, and I had seen the whole house fall on me once before, and the Bishop Trust Company was very willing to sell out because the profits had dropped. The indications here were very bad, and the small amount that I bought out at \$12,000 was of small consequence.

Q. The 42% was not of small consequence?

A. No, the 42 came back instead of \$42,000 it came back in the business \$67,500.

Q. It came in and out, or out and back in again?

A. Well, my son bought the interest in the partnership, and my wife put in sixty some odd thousand dollars.

Q. Your son had no cash to contribute of his own. He had to make a loan from the trust, is that right?

A. Yes.

Q. Of which he was the beneficiary?

A. That's right.

Q. Did you indorse the notes which your son gave the trust [78] to secure the \$62,000?

A. Yes, sir, and Mrs. Sultan indorsed them. The business guaranteed them. It is all in the papers there. I know that any bank would have loaned the money on the same, the most conservative bank in the world would have loaned that much money under the circumstances.

(Testimony of Edward D. Sultan.)

Q. That is your opinion, isn't it?

A. In my opinion, yes, sir.

Q. With respect to your relationship with the trust company particularly with the trust itself, did you often suggest investments or direct the trustee to make certain investments of the trust funds?

A. They were discussed with me and I suggested it, yes, sir.

Q. And where they would make such investments, you approved their actions, is that correct?

A. I approved anything, practically anything that they asked me to approve. I thought it was all right.

Q. And at least once didn't you instruct them to sell a considerable amount of securities contained in the trust?

A. My brother and I were in New York, and as I say, he was my financial advisor. He had played in the stock market at different times in his life and my experience there was practically nil, and I know that we wired them. I don't know whether it was our suggestion or what, that we would like to see them get out of the stock market. [79]

Q. And they got out immediately, didn't they?

A. I think so.

Q. You mentioned that you had had a number of discussions with Mr. White and Mr. Benner. Isn't it a fact that very many of those discussions had to do with the investment policies of the trust as distinguished from anything to do with the partnership?

(Testimony of Edward D. Sultan.)

A. It was with the partnership, practically— Even when my boy was eighteen years old he was in on some of the discussions as to investments, and so forth. He was consulted.

Mr. Harless: That's all, your Honor.

The Court: Any questions, Mr. Wild?

Mr. Wild: Yes, your Honor.

### Redirect Examination

Q. (By Mr. Wild): Counsel just asked you a question about a wire which was signed, I think, by your brothers, Ernest and Edward, from New York, concerning recommendations of sale of all stocks. I will show you this wire and ask you if that is the communication to which he was referring?

A. Yes, sir, that was what I was referring to, and I imagine he was.

Q. Yes, and what is the Ernest whose name is signed on that? [80]

A. That is the co-partner.

Q. Is that also a co-trustee?

A. Yes, sir, co-trustee.

Q. Would you mind reading that wire into the record?

A. The date is April 27, received April 27, April 26 out of New York, received April 27, 1944.

The Court: Is that 1944?

The Witness: Yes.

The Court: I thought this inquiry was as to a later date.

(Testimony of Edward D. Sultan.)

The Witness: "Attention, W. A. White, Bishop Trust Company, Attention, W. A. White, Honolulu. We recommend you sell immediately all stocks Edward Sultan Jr. trust excepting government bonds including purchases spring 1942 and per your letter April 2 1943 and later Bulova stocks stop Also recommend investing entire proceeds in Series F war bonds stop Confirming letter in mail. Ernest and Edward Sultan."

Mr. Wild: No further redirect examination.

The Court: Step down, please.

(The witness was excused.)

Mr. Wild: Mr. Benner, will you please take the stand? [81]

#### EDWIN BENNER JR.

called as a witness in behalf of the Petitioners, being first duly sworn, was examined and testified as follows:

The Clerk: State your name and address, please.

The Witness: Edwin Benner, Jr., 4473 Aukai Street, Honolulu, T. H.

Mr. Wild: Counsel for the government is willing to stipulate for the purpose of saving time of Court and counsel that the first eleven questions and answers, including the Court's questions also beginning on page one to the top of page five in this transcript shall be considered as part of the record here.

The Court: What are those, pretty much qualifying questions?

(Testimony of Edwin Benner Jr.)

Mr. Harless: They are all qualifying questions. They run down to the very first question having to do with the partnership involved yesterday.

Mr. Wild: We so stipulate.

The Court: How is that going to be handled?

Mr. Wild: The reporter will be required to write it right in the transcript.

The Court: Very well.

(The portion of the transcript stipulated to above is quoted as follows):

Direct Examination

[82]

Q. (By Mr. Wild): What is your present position, Mr. Benner?

A. I am Vice-president and Secretary of the Bishop Trust Company, Limited, and in charge of the trust department.

Q. How long have you been in charge of the trust department?

A. Since the spring of 1946.

Q. Prior to that time what was your position?

A. I was a trust officer of Bishop Trust Company.

Q. And for how long?

A. I joined the trust company in 1934, and I have been in the trust department at all times.

Q. I take it that your active business life, so far as your own participation is concerned since 1931 has been with Bishop Trust Company, Limited?

A. That's right.



(Testimony of Edwin Benner Jr.)

Q. What was the Bishop Trust Company's capital in 1940 and 1941, if you recollect?

A. It was approximately \$1,200,000 with a surplus of a like amount.

Q. And what type of business did it conduct at that time?

A. It conducted a trust company business here in the Territory. Banks do not do trust business and trust companies do not do banking business, and so during that entire time it was operated strictly as a professional fiduciary, with side issues such as insurance, real estate sales and brokerage, but its main business is administration of estates, trusts, [83] guardianships, agency accounts, acting as corporate trustee of all sorts and types, transfer agents, that type of business.

Q. In one fiduciary capacity or another do you have as part of your duties the management of various types of properties?

A. Yes indeed.

Q. You might explain that.

A. The normal trust or estate that we handle, of course, consists primarily of stocks and bonds or ownerships in real estate, but very often we have the problem of the administration of proprietorships or own the control or total outstanding shares of businesses, and these change year for year as the estates are probated and closed out. Some of our trusts have operated business for many years, though. I can give you a few examples.

Q. I wish you would give me some examples

(Testimony of Edwin Benner Jr.)

of businesses that you have operated in a fiduciary capacity.

A. We have just closed up an estate that has as its principal asset the controlling interest in a small structural steel company here in town with business operating right straight along. Our officer in charge was necessarily right on the job sometimes in the office, and so forth. We do own the controlling interest, through one of our fiduciary accounts, the largest specialty store, McInerny, Limited, that does \$3,000,000 of business each year. I personally am secretary-treasurer of that company and sign all checks, incidentally. I receive daily statements of its sales volume by department all [84] the way through. We have a very active part.

Another business we are handling right now is the Honolulu Tile Business owned by the Worthington Estate. When Mr. Worthington passed away—it was his own business, and it was necessary that we step in and operate it, and not being familiar with that business we had some difficulty for several months and lost money until we were able to get things organized properly with an efficient manager, and are now pulling it out of the red and are doing very well. Our men in charge of that particular estate consult with me every week about their problems that they have there. They are on the job right along too.

We have handled dairies; we have handled ranches; we have handled ice cream business. In

(Testimony of Edwin Benner Jr.)

1944 and 1945 we administered the estate of Frances Wadsworth on the island of Maui. Mrs. Wadsworth at the time of her death was owner of the Maui Soda and Ice Works. That business owned the Coca-Cola franchise on the island of Maui. I made 18 trips to Maui during the year 1945 in connection with that business, taking a very active part in it.

The Court: Is that as executor?

The Witness: We were temporary administrators to start with, the license was issued in our name at first, and then to us as executor.

The Court: And what do you do there, try to liquidate the company as quickly as possible? [85]

The Witness: We operated it just about a year. In 1944 and 1945 were boom years here in the islands because of the tremendous number of service people here, and bottling companies and business of that nature did a tremendous business, and rather than a liquidation program we continued to operate so that we would have a going business to sell to someone. We negotiated a sale eventually to a man who had been the West Coast agent for Coca-Cola. He was able to secure the consent of the Coca-Cola Company.

Mr. Nyquist: Objection, your Honor. I don't think there is any occasion to go into other bottling company cases.

The Court: We don't need to go any further on that.

Q. (By Mr. Wild): What other type of business?

(Testimony of Edwin Benner Jr.)

A. I just jotted down a few, auto sales——

The Court: I think that is enough.

The Witness: We have the Ford agency in Hilo right now that we are administrating.

(End of stipulated portion of transcript.)

Q. (By Mr. Wild): Mr. Benner, will you kindly state what your connections were with the Edward Sultan Trust?

A. Well, as a trust officer of Bishop Trust Company in 1941 and 1942, I became acquainted with the Edward Sultan trust. The trust itself was administered primarily by Mr. W. A. White of our office, and I worked with him on his accounts as he did with me on mine. [86]

Q. Yes.

A. When he was away from the office, I took care of his affairs, and even sat in with him on discussions that he had with many trusts, and this trust also.

Q. I see. Now, as a part of your duties and responsibilities there at the trust company, did you discuss the method of having an inter vivos trust a partner in a going business?

A. Yes, I remember the discussions.

Q. Do you remember what occurred here in this case?

A. Yes, I do.

Q. Can you state briefly what it was and what the purpose of it was?

A. Well, we were approached, I believe it was Mr. Cades who approached us, to see if we would be willing to act as co-trustee of this Edward Sultan

(Testimony of Edwin Benner Jr.)

Trust. The principal asset of the trust would be an interest in a partnership. This is the first case that we had ever had, or it would be the first case we had ever had where we were to act in that capacity in an inter vivos trust. We were a little uncertain as to whether or not under the Territorial statutes we should recognize it as a proper trust investment. It was new to us. We indicated, however, after some discussion there in the office, that we would be willing to act provided the proper court here in the Circuit Court in equity approved of such an investment, and so indicated to [87] Mr. Cades. The proper petition was entered and a hearing was held. I did not attend the hearing. An order was entered.

Mr. Wild: The petition and decree are in the record as stipulated, your Honor.

Q. (By Mr. Wild): Mr. Benner, what was your own connection with following the business of the partnership, the special partnership of Edward D. Sultan Company?

A. My contact was only intermittent, as Mr. White was very often there, and our joint discussions when I was present and when I talked with Mr. Sultan alone were primarily concerned with how business was going, his difficulty due to the war here of getting shipments out here and the growth of the business itself, and I think he was somewhat irritated on our continued insistence to withdraw our share of the profits. We thought that we should have them out as soon as they could be withdrawn. The statements indicated large cash balances were



(Testimony of Edwin Benner Jr.)

maintained, and as it took several mouths generally to prepare the statements, we thought that by that time enough funds should be available to carry on the business if they paid us out our share.

Q. Mr. Benner, what were the assets of the trust known as the Edward D. Sultan trust in August, 1943?

A. Would it be permitted that I refresh my memory on that?

Mr. Wild: That was the date that your Honor asked about, asked the other witness, if my recollection is right. [88]

The Court: I don't remember what was the significance of that.

Mr. Wild: Just what the assets were in the trust just before the tax years involved.

The Witness: The assets were the 42% interest in the partnership known as the Edward D. Sultan Company, and common stocks, some Series F. bonds, and cash totaling \$140,000. This represented distributed and the investment income. In other words, we had \$180,000 assets in the trust as of that date.

Q. (By Mr. Wild): So that the \$40,000 is a little less than—it is a small fraction of the total assets of the trust at that time?           A. Yes.

The Court: Well, that is of course, I suppose, based on cost.

The Witness: Yes, sir.

The Court: And it might very well be that the interest in a partnership with these huge earnings

(Testimony of Edwin Benner Jr.)

would be much more than that. In other words, that 42% worth——

The Witness: \$42,000.

The Court: Your annual earnings were far above that weren't they?

The Witness: That's right. This is book value.

Q. (By Mr. Wild): And the other securities there are at [89] book value?

A. That's right.

Q. Not market value at that time?

A. That's right.

Q. Now Mr. Benner, at the time of the negotiations leading up to the sale of the interest in the partnership by the trust, did you participate in those?

A. Yes, I was the officer in charge of the account at that time.

Q. All right, will you recount what happened?

A. The first thing that happened was the receipt of a letter, an offer from Mr. Sultan, and a discussion then followed as to whether—the discussion incidentally was in our office—as to whether, Mr. Sultan felt that he could only continue with a larger capital, we should indicate to him that we would prefer that the partnership interest not be sold and that we contribute more capital. We knew we were already in the business. We decided against making that suggestion. We felt that the business had grown enormously during the war years and was stabilized off and might decrease, and we felt that we had enjoyed very good earnings. We had

(Testimony of Edwin Benner Jr.)

drawn them out. We had invested them and we were holding them for our beneficiary, and that it would be to the best interest of the trust to sell this interest to Mr. Sultan, and we so informed him by letter about a week [90] or ten days later.

Q. And after that decision was made did the other trustee participate in it, approve it?

A. He approved of it, yes.

Q. And what was done then?

A. Well, this proposal was made in February and was to take effect as of the end of January, 1949, and it took some little time to complete their January 31, 1949 auditing statement which was to determine exactly what was their distributive share of the income. When those reports were prepared Mr. Sultan submitted the reports to us, and at the same time a statement of our share according to these reports, our share of the accrued income, our credit on their books, I think it was called. He submitted this check on the 27th of April. A few days prior to that a loan had been negotiated with us from this same trust for \$62,500. The loan was to be made to Edward D. Sultan, Jr., the beneficiary and remainder man. The request for the loan was discussed in our office and was referred to counsel for advice as to whether it would be permitted under the terms of the trust. We were advised by letter that it was, provided we felt it was a proper business risk. As I recall, this letter also suggested that as to the security that we should request, which was the assignment from young Mr. Sultan of his

(Testimony of Edwin Benner Jr.)

monthly payments due him from the trust as [91] they were due, his remainder interest in the trust, and indorsements by his father and mother. This was considered by us in the trust company. We felt that it was a good business risk for this trust. There was ample security for the loan.

Q. What about the interest that young Mr. Sultan was to receive in the proposed new partnership? Was that to be hypothecated also?

A. I forgot to mention that. It was also. In other words, we had hypothecated his interest in the partnership and the indorsement of the other partners, besides the trust itself which was worth something over \$200,000.

Q. Has it been unusual in past years for trustees to make loans to beneficiaries of a trust?

A. We do it in some cases. We don't make a general practice, our difficulty being, very frankly, the difficulty in dunning the beneficiary for interest payments and their inability to pay, but we did not have that situation here. We had an automatic assignment of payments that were to be distributed to him from the same trust which would merely be journalized over on our books and would never get into his actual possession, as a matter of fact. When they were due every month, they were merely journalized.

Q. What has happened to this note?

A. It has been paid down according to the terms of it. All [92] payments have been met.

Mr. Wild: No further direct.

(Testimony of Edwin Benner Jr.)

Cross-Examination

Q. (By Mr. Harless): Mr. Benner, were you connected with this particular trust at the time it was created?

A. I was the co-signer with Mr. White as trust officers in the Bishop Trust Company. I believe I met Mr. Sultan then. I am not certain. I met him along about that same time because it is our practice to have officers who handle the accounts to meet the clients as soon as possible.

Q. Now in connection with the services rendered by the trust as a special partner to the partnership, were there very many discussions between the trust company and either Mr. Ernest Sultan or Mr. Edward Sultan relative to the business policies and the method of operation of the partnership?

A. Well, as to Mr. Ernest Sultan, I never met him. He was here only a short time after the trust was created, and I never have met him at all. He has never been back here, as far as I know, since he left in June, 1942. Our correspondence with him has been more relative to the general investments of the trust other than the partnership, it being my information direct from Mr. Sultan that he talked with his brother. Now he, I think he testified himself [93] a few moments ago—Our contacts with Mr. Sultan, and that goes for myself and my observation of Mr. White in his contacts, occurred periodically, maybe three or four or five times a year, Mr. Harless, probably not more often than that, and concerned, as I said a while ago, of how business



(Testimony of Edwin Benner Jr.)

was going. I was aware myself when he said that they had opened a New York office, and we thought that under the circumstances to expedite the buying that it was a very good idea and thoroughly approved of what they were doing.

Q. Well, when various and sundry policies were adopted, was the trust company advised or informed, or were you invited to participate in the discussions?

A. Well, I could answer that yes and no, because on some occasions it was a discussion of what he would like, but other times it was, "We have done this, and I hope it is all right".

Q. Isn't it a fact that many of the discussions and much of the correspondence with Mr. Edward Sultan also had to do with the trust and the investments that might be made by the trust as distinguished from the partnership problems?

A. Originally yes, but during the last several years our investments have been fairly well fixed in bonds, and we haven't had occasion to have that contact for that purpose.

Q. As a matter of fact, isn't it true that all of the investments since the date in April, 1944, in which certain [94] stocks were sold as a result of the radiogram read into the record have been government bonds of one sort and another?

A. With one exception.

Mr. Wild: We object to that. It assumes a lot of things which are not in evidence. It says these bonds were sold as a result of the radiogram read

(Testimony of Edwin Benner Jr.)

in the record. It implies that the trust company had no activity in it. We merely read the radiogram which counsel had brought out.

Q. (By Mr. Harless): Do you have your file with you, Mr. Benner?      A. Yes, I have.

The Court: I don't know whether—is this of any particular consequence?

Mr. Harless: Not particularly. I will withdraw the question.

Q. (By Mr. Harless): Mr. Benner, did the trust company sell those stocks as a result of that radiogram?      A. Yes, we did.

Q. Immediately?      A. Yes.

Q. Did you consider that to be a direction on the part of Mr. Edward, Mr. Ernest Sultan, the trustee?

A. No, not a direction. It was a recommendation and so stated in the wire.

Q. And you accepted it as such? [95]

A. Yes, we did. It came from our co-trustee as well as the settlor.

Q. What type of investment has the trust put the money in since that date?

A. We now have it invested in bonds and a note.

Q. And the note?      A. Yes.

Q. You testified somewhat about your continued insistence on payments from the partnership over to the trust.      A. Yes.

Q. Were there a number of times that you found it necessary to either telephone or write asking for funds to be distributed?

(Testimony of Edwin Benner Jr.)

A. Well, we use a tickler system there so we won't overlook these things, and they automatically come up, and if the report hadn't come in, Mr. White's secretary would write a letter and if he was available he would sign it. If he was not available I would sign it, just to get it in the record that we wanted to get his report in and his payment.

Q. You needed money or a report?

A. Under our distributive share. They were generally very prompt.

Q. Now isn't it true that there were occasions when your correspondence became somewhat insistent because tax payments were coming due and there was not sufficient cash in the trust? [96]

A. That's right. We had income invested and we preferred not to sell any of the bonds as long as we knew we had the credit with the partnership, and in reviewing the file myself I ran across an occasion where we had, in December of one year, apparently advanced the December 15 payment, and we were OD on our books, and Mr. Sultan was back in New York, and he directed that payment be made and it came over immediately.

Q. By OD you mean the trust was overdrawn?

A. Yes, overdrawn on our books, which is a situation we do not ordinarily permit.

Q. In connection with this matter of distribution under the trust instrument and under the partnership instrument, did the special partner have the power to force a distribution?

A. No, we had to ask him for it.

(Testimony of Edwin Benner Jr.)

The Court: The provisions in the agreement state what can be done.

Mr. Harless: That's right, your Honor.

The Court: I don't think we are adding to it by just asking the same thing again.

Q. (By Mr. Harless): Were you ever in the offices of the Sultan Company, Mr. Benner?

A. Yes.

Q. You had occasion to go over there?

A. Yes. [97]

Q. On business in connection with the partnership?

A. Yes, not many times, just two or three times, but I have been there.

Q. As an ordinary matter, would an interest in a partnership business be the type of investment that your company would make?

A. It was so unusual that we went into court to have it approved by the court before we would accept this. Subsequently we have had quite a number of partnership interests in trusts.

Q. This same arrangement, a similar arrangement?  
A. In a general way.

The Court: That is where the initial corpus is of that character?

The Witness: Yes, sir.

Q. (By Mr. Harless): In that connection, why wouldn't a partnership interest ordinarily be a good trust investment from your experience as a trust officer? Is the risk too great?

A. Well, there is too much liability attached to

(Testimony of Edwin Benner Jr.)

an investment like that. In this instrument I think you will find that there is a release of any liability from this investment, and our normal policy is to go into a more conservative diversified schedule of investments of stocks and bonds, preferred stocks and real estate, and so forth, [98] not this, it is too volatile.

Q. Is it your company's policy to insist upon a release of liability in a normal situation where you are going into good stocks and bonds?

A. If it is an inter vivos trust we ask that as a standard provision from any attorney that prepares any document that we are going to ask.

Q. Isn't it a fact that the trust company as trustee might not have been interested in acting in this case if the business wasn't being managed by Mr. Ernest and Mr. Edward Sultan? In other words, didn't you look to their management as one of the major assets of the business?

A. You mean if the settlor himself had not been interested in it?

Q. That's right.

A. I believe we would have insisted on satisfying ourselves that there was competent management in it, because we recognize that in this particular case there might be a time when we might have to take over and do with what management might be left there, and to eventually find an adequate management.

Q. Did you participate in any of the discussions



(Testimony of Edwin Benner Jr.)

that preceded the establishment of both the trust and the partnership?

A. No, sir.

Q. Who in your firm did participate in those discussions? [99]

A. My first knowledge of it came from Mr. White. He told me that he had talked with Mr. Cades, and he discussed with me as to whether it would be something that we should go into or not.

Q. When was your first contact with this trust and partnership after it was formed or just before?

A. I signed the document. That was my first contact. I had discussed it beforehand with Mr. White.

Q. But not with Mr. Sultan?

A. No.

Q. Nor Mr. Cades?

A. No, I did not talk with Mr. Cades.

Q. Now you testified on direct concerning some discussions held within the trust company in 1949 after you had received a letter from Mr. Edward Sultan relative to an offer to purchase the 42% interest, and I believe you testified that at that time you even considered trying to stay in the business, is that right? A. Yes.

Q. Make a further capital contribution?

A. That was part of the discussion as to the advisability.

Q. The trust had already made something of a capital contribution in 1944 or 1945, had it not?

A. Well, that was just a temporary situation during a boom period in order to improve the credit

(Testimony of Edwin Benner Jr.)

rating of this partnership. [100] That's all it was. It was only for a limited time. It was not adding capital for a permanent proposition. We got it back when we were supposed to get it back.

Q. You got it back?

A. Yes. There was a tremendous change between 1944 and 1949 in our economic condition here in the islands.

Q. Did the trust company think that the continued participation in this partnership was a good investment in 1949?

A. From my discussion with Mr. Sultan when this letter came in, it was obvious that he had to have more capital. There was no question about that. I was well satisfied, and he had a good proposition to buy us out. Incidentally, I think he stated—it shows in the letter—a purpose that he had always had in mind, that his son would actually himself personally buy into this partnership as soon as it could be arranged.

Q. Well, then, he wasn't interested in bringing you into it, the trust company or the trust into the partnership on a greater scale?

A. He did not make that suggestion, but it was our duty as a trustee to study it from all angles. We weren't going to simply do what Mr. Sultan proposed, not at all. We had to reason it out ourselves.

Q. You decided not to go in? [101]

A. That's right.

Mr. Harless: That's all.

Mr. Wild: No redirect, your Honor. The Pe-

titioners rest, subject to having those exhibits furnished.

Mr. Harless: The Respondent has no further matter except the exhibits.

[Endorsed]: T.C.U.S. Filed July 18, 1951.

\* \* \* \* \* [102]

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[Endorsed]: No. 13804. United States Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Edward D. Sultan, Respondent. Commissioner of Internal Revenue, Petitioner, vs. Olga L. Sultan, Respondent. Transcript of the Record. Petitions to Review Decisions of the Tax Court of the United States.

Filed April 13, 1953.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 13,804

COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

EDWARD D. SULTAN and OLGA L. SULTAN,  
Respondents.

PETITIONER'S DESIGNATION OF  
RECORD ON APPEAL

The petitioner hereby designates for inclusion in the printed record on appeal the following portions of the typewritten record received by this Court from the Clerk of the Tax Court of the United States in the above-entitled cause:

1. Docket entries, No. 24,513.
2. Docket Entries, No. 24,514.
3. Petition (with exhibit), No. 24,513.
4. Answer, No. 24,513.
5. Amended answer, No. 24,513.
6. Petition (with exhibit), No. 24,514.
7. Answer, No. 24,514.
8. Amended answer, No. 24,514.
9. Stipulation of Facts, with Exhibits 1 through 14, 23 through 26.
10. Transcript of Proceedings, 6-19-51, pp. 1; 23 through first six lines on p. 102.
11. Findings of Fact and Opinion.
12. Decision, No. 24,513.

13. Decision, No. 24,514.
14. Petition for Review, No. 24,513.
15. Petition for Review, No. 24,514.
16. Statement of Points, No. 24,513.
17. Statement of Points, No. 24,514.
18. This Designation.

Dated: April 28, 1953.

/s/ H. BRIAN HOLLAND,  
Assistant Attorney General,  
Attorney for Petitioner.

[Endorsed]: Filed Apr. 30, 1953. Paul P. O'Brien,  
Clerk.



